UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
	.	
W.R. GRACE & CO.,	.	Case No. 01-01139(JKF)
et al.,	.	(Jointly Administered)
	.	
Debtors.	.	July 23, 2007 (2:18 p.m.)
	.	(Wilmington)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JUDITH K. FITZGERALD
UNITED STATES BANKRUPTCY COURT JUDGE

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

THE COURT: W.R. Grace, 01-1139. The parties I have listed by phone are David Parsons, Jay Hughes, Anne Kearse, John Phillips, Robert Phillips, Rob Halder, Catherine Chen, Shayne Spencer, Debra Felder, Richard Wyron, Jonathan Brownstein, Jason Solganick, John Herrick, Stephen Blauner, Michael Davis, Robert Guttmann, Tiffany Cobb, Christina Kang, Marc Casarino, Paul Matheny, Christopher Candon, Robert Horkovitch, Walter Slocombe, Marti Murray, James Wehner, Brian Kasprzak, Michael Joyce, Mark Plevin, Leslie Epley, Jacob Cohn, David Liebman, Curtis Plaza, Irwin Zandman, Sander Esserman, Van Hooker, David Klingler, Dale Cockrell, Igor Volshteyn, V-o-l-s-h-t-e-y-n, Arlene Krieger, Andrew Hain, Barbara Seniawski, Peter Shawn, Janet Baer, Barbara Harding, Lisa Esayian, Sam Blatnick, Theodore Freedman, Alex Mueller, Guy Baron, Pamela Zilly, Paul Norris, David Siegel, Mark Schelnitz, Brian Mukherjee, John Greene, Alan Runyan, David Beane, John Demmy, David Hickerson, Jarrad Wright, Daniel Chandra, Richard Levy, Terence Edwards, Douglas Cameron, James Restivo, Sean Walsh, Matthew Kramer, Daniel Speights, Martin Dies. I'll take entries in court, please.

MR. BERNICK: Good afternoon, Your Honor. David Bernick for W.R. Grace.

MS. BAER: Good afternoon, Your Honor. Janet Baer for W.R. Grace.

MR. KRUGER: Good afternoon, Your Honor. Louis

Kruger for the Unsecured Creditors Committee.

MR. O'NEILL: Good afternoon, Your Honor. James O'Neill for Grace.

MS. SINANYAN: Good afternoon, Lori Sinanyan for the debtors as well.

MR. FRANKEL: Good afternoon, Your Honor. Roger Frankel on behalf of David Austern, the Future Claims Representative.

MS. COLEMAN: Good afternoon, Your Honor. Magdeline Coleman from Buchanan Ingersoll & Rooney -

THE COURT: I'm sorry, I couldn't hear you.

MS. COLEMAN: Magdeline Coleman from Buchanan Ingersoll & Rooney on behalf of the Equity Committee.

THE COURT: Thank you.

MR. MANGON: Your Honor, Kevin Mangon from Womble Carlyle on behalf of the State of Montana.

MR. FINCH: Nathan Finch and Peter Lockwood on behalf of the Grace ACC, Your Honor.

MR. ANSBRO: Good morning, Your Honor. John Ansbro also for the FCR.

MR. HURFORD: Good afternoon, Your Honor. Mark Hurford, Campbell & Levine for the ACC.

MR. BAENA: May it please the Court, good afternoon, Judge. Scott Baena and Jay Sakalo for the Property Damage Committees.

MR. DEMMY: Good afternoon, Your Honor. John Demmy from Stevens & Lee for Fireman's Fund Insurance Company.

MR. HEALY: Good afternoon, Your Honor. Dan Healy for the United States.

MR. BUSBY: Good afternoon, Your Honor. Leonard Busby and Noel Burnham for the MNWR firms.

MS. AARONSON: Good afternoon, Your Honor. Anne Aaronson from Pepper Hamilton for BNSF Railway.

MS. LEHR: Rachel Jeanne Lehr, Deputy Attorney General for the State of New Jersey, Department of Environmental Protection, and I have John Dickinson with me, also a Deputy Attorney General for the State of New Jersey, Department of Environmental Protection.

THE COURT: Thank you.

MR. KLAUDER: Good afternoon, Your Honor. David Klauder for the United States Trustee.

MR. COHN: Daniel Cohn of Kerri Mumford for the Libby claimants.

MR. ESSERMAN: Sander Esserman, Van Hooker, and Alan Rich of Baron & Budd are also here. We're, of course, with Stutzman Bromberg representing Baron & Budd in various roles, thank you.

THE COURT: Anyone else? Okay, Mr. Bernick.

MR. BERNICK: Your Honor, I think this afternoon we have a very full agenda. We intend to proceed in the order

of the agenda, at least for the first several items and then probably just skip around a little bit in order to get things done that are of a time-sensitive nature, and also involve people who may or may not have an interest in staying for the balance of the agenda. I think that there are several items at the outset that can be taken up at the conclusion of the hearing, don't require argument, and Ms. Baer will be handling those at an appropriate point in time, but I think that probably the best idea is to proceed with item number 6 first, which is our motion for another extension of the exclusivity period. I'm very mindful in talking about exclusivity of Your Honor's caution/instruction/urging that we only focus on new things and that we try to get through this in a prompt fashion, and in order to try to maintain our discussions within those guidances, I'm just going to keep my initial remarks very, very short, and I know that others will then rise to oppose the motion, and I'd like to have Your Honor's indulgence so that after they're all done, I'm going to need a little bit of time to kind of pick up on some of the detail, if that's all right.

THE COURT: It's a 20-minute rule, Mr. Bernick.

MR. BERNICK: Yes, well, I was wondering whether you were going to remind me of that one in particular, but I had that in mind. In any event, at the last extension, Your Honor granted the motion for an extension based upon a

handful of relatively simple findings, very important findings, but they were fairly straightforward. Beyond commenting on the long history and the different factors that have been responsible for the fact that the case has gone on for sometime and there have been a series of motions and a series of extensions regarding exclusivity, you made some very specific findings. The first finding was that there was really almost, I think, no disagreement but that estimation was the first order of business in order to continue the case on towards its ultimate hoped-for resolution. I believe that everybody believed that there was a necessity to have an estimation take place. Number two, that with regard to that estimation, progress had been made. Indeed, substantial progress had been made in pushing the estimation proceeding along. Third, that while the estimation proceeding was underway, it was best to proceed in an environment where there were as few distractions as possible, and from that point of view, Your Honor was not persuaded that there would be gain in opening exclusivity up and in having competing plans filed and litigated, and I think that those were really the principal holdings that Your Honor made. I know that there were many caveats, as always in a case like this, and maybe there's no other case exactly like it, but Your Honor's decision was very much hemmed in by the circumstances then present to the Court, and I'm not going to reiterate all the

caveats and all the other language in thinking, the one client, the determination, that, I think, was the heart and sole of it, a relatively simple series of propositions. That argument or that decision by Your Honor was appealed to Judge Buckwalter, District Judge, and there was actually a fairly extended proceeding before Judge Buckwalter so that Judge Buckwalter can become familiar with the same basic dynamics, and he considered exactly the same factors as the Court did and decided to affirm Your Honor's determination focusing very, very much on exactly the same factors. Those factors, those three basic factors are still sound today, and the findings are still sound today, and I don't mean to minimize the fact that we're in here asking for another extension, but those same basic predicates are every bit as true today as they were before. Indeed, I would urge the Court to focus on the many, many additional facts that have come into existence since that time that really underscore the wisdom of still maintaining the period of exclusivity while we plod forward and strain to go forward and get to the estimation process which is the landmark that we all agree has to be reached before we really can have a full and fruitful plan discussion. So, on that score, Your Honor, I won't review all those different facts. There are a number of them. I suppose that many of them will come up during the course of discussion, but with Your Honor's indulgence, I will sit

down, having used, I hope, very few minutes, and await the results of the arguments that will be made by others.

THE COURT: All right. Mr. Frankel.

MR. FRANKEL: Your Honor, may I approach?

THE COURT: Yes, sir. Thank you.

MR. FRANKEL: What I've handed Your Honor are the demonstrative exhibits, some of which I will use today that were distributed to the parties Friday afternoon. Your Honor, we have heard what you said the last time this issue came up. I'm not going to cover the traditional legal arguments. You've heard them not only in this case but in a lot of cases. It's more the posture of the case, and the debtors' request that I want to address. There is one concept that I do want to remind the Court of, and that is that the case law is clear. With each succeeding request for an extension, and this is number 10, the burden on the debtor does get harder. I think from Mr. Bernick's opening argument, it's clear that all he wants to do is rebuttal. The burden is on the debtor, however, every time they request an extension of exclusivity. The debtors' 10th request brings a new meaning to the word "hutzpa". They actually ask this Court to approve an extension to a time which is 90 days after a final order on estimation. We have tried to chart out what that actually means, and if Your Honor will look at the chart -

THE COURT: You have to turn the button on the bottom.

MR. FRANKEL: I'm not sure how this focuses. Oh, I see, okay. I appreciate that.

THE COURT: Mr. Bernick's second career.

MR. FRANKEL: I wish it was his first career, Your Honor.

MR. BERNICK: Make me an offer.

MR. FRANKEL: Your Honor, this chart begins to explain what our primary concern is, which is the timeline if the debtors' exclusivity rights continue. We have the estimation hearing January through April of 2008, and nobody is arguing that we will not have that estimation hearing. That clearly is a bellwether hearing. Your ruling on that is going to be a critical ruling. We are not suggesting that somehow our plan is going to avoid that. What we are suggesting, however, is that under the debtors' request, and I'll now go to what happens after the ruling, there are bound to be appeals, one side or the other is not going to like Your Honor's ruling, maybe both -

THE COURT: Mr. Frankel, I'm distressed.

MR. FRANKEL: And during that time period, there still will be exclusivity. So, any negotiations, why would the debtor be negotiating after there's an appeal and there's essentially a stay of the case? We then get to the timeline

for a Chapter 11 exit. I'm not going to go through all of the different possibilities, but the real problem is at this point, and we're now in the fourth quarter of 2009 and after we've heard from the Third Circuit, the debtor still has an un-confirmable plan. Your Honor is then ruling on a plan that either will be confirmed or not confirmed sometime in the first quarter of 2010. Based on the plan that we know the debtor has right now, we would be starting over at square one, starting in 2010. The debtor says, Your Honor, that no new issues have really been raised, and as I said, clearly, estimation has to happen first. The debtors have no real incentive to get the critical plan issues resolved right now. The debtors can see what the expert estimation reports say. The FCR's expert, the Tellinghast organization indicates a present value of about $3.7 billion for personal injury liabilities. The ACC's expert has the number at 5.7 billion. Of course, these numbers don't even include property damage. If the asbestos experts are even close to right, then the equity in this company is severely at risk or will simply be wiped out. The debtors' expert, with very specific criteria determined by the debtors, says that the liability is merely $712 million. If the debtors and the equity holders really believe that, what are we doing here? In that case the debtors don't need a 524(g) plan. They don't need a plan with an artificial cap on asbestos. They can just file a

plan that leaves asbestos claims truly unimpaired so they can pursue their claims in the tort system. Future claims will do the same thing. Certainly, the debtor can handle less than a billion dollars of asbestos liability without a channeling injunction. The Court actually reflected on this at the December 19, 2005 hearing, and I'm quoting from the transcript at page 32, "And I think the debtor may have somewhat of a choice. Maybe it's not as much a black and white issue as I'm going to make it, but just to sort of illustrate the point, it seems to me that if the debtor is convinced that there's equity, then I really question whether the debtor is looking at a 524(g) injunction at all." That's the close of the quote. The problem is, the debtors have no reason to file such a plan or to fix their un-confirmable plan because there is no threat of a competing plan being filed. Now let me spend a few moments on what the debtors describe as the negotiations. First of all, the results really speak for themselves. The debtor has filed a plan in 2004 with the Equity Committee and with the commercial creditors and since then there's been no further changes to their plan, certainly no changes to accommodate asbestos. We were close in October of 2004 when they were required by this Court to file a plan. At that time the FCR, Mr. Roster made a proposal to bridge the gap. We never heard back, but at the December '05 exclusivity hearing we did hear why. And

now I'm quoting Mr. Bernick at the transcript on page 97, quote, "Mr. Frankel says, Well, gee, we never got back to them on the FCR's proposal. The FCR's proposal came at the end of the day in an effort to try to bridge gaps that had emerged elsewhere in the negotiations, and it wasn't a productive proposal because it not only did it not bridge those gaps, it made them worse. So we didn't respond to it because it wouldn't have been productive. The negotiations were dead in the water. They weren't going anywhere." After that, there was a mediator. The mediator could not bring the parties together. The mediation failed. After the mediation, on December 14th, 2006, Mr. Austern, Mr. Shelnitz, who's the general counsel in-house at Grace, Mr. Bernick by phone, and myself met, so that Mr. Austern could deliver yet another proposal to settle the asbestos liabilities. Mr. Austern later heard back from the debtor that our offer was rejected, and we would not be receiving a counter-proposal. We strongly urge, Your Honor, that until the playing field is leveled by allowing competing plans, there will be no serious negotiations by the debtor. What I want to walk through with the Court is the timeline that we think makes sense for lifting exclusivity. And, Your Honor, this the chart called, The Asbestos Constituents Timeline for Chapter 11 Exit. Exclusivity would be terminated at this time, but that does not mean that we have a plan ready to be filed. We're not

suggesting that. We haven't been working on that. What we do have is serious issues that this Court could rule on to guide all of the parties with respect to a confirmable plan. These are issues that we think makes the debtors' plan not confirmable. One is, under 524(g): Are the present asbestos claimants entitled to vote? It appears to be a 75 percent affirmable vote requirement. And number two, when you channel asbestos claims to a trust including future claims aren't they impaired? And if they're impaired, doesn't that implicate all of the provisions of 1129 including the vote. These are critical issues in the debtors' plan that we believe make it un-confirmable. Once we have direction on that, and that, Your Honor, we believe could be briefed and argued this year, we then have the estimation hearing. We then have, hopefully, a court ruling on the estimation hearing in the middle of 2008, and then in the fall or in August of 2008 we have competing plans on file. We have a disclosure statement hearing, and we have a confirmation hearing, either at the end of '08 or early '09. We have a process in place to actually get this case out of bankruptcy. What we have right now in front of us, Your Honor, is no process to get this case out of bankruptcy. We have a lot of litigation, and we have a case that is stalled. The negotiations are stalled. The plan process is stalled. We're just trying to make a difference here so that we

actually get this case out of bankruptcy sometime in the near future. Thank you very much, Your Honor.

MR. FINCH: Your Honor, I'll just reserve the balance of our time for any sur-rebuttal from what Mr. Bernick may say.

THE COURT: All right. Mr. Klauder.

MR. KLAUDER: Thank you, Your Honor. David Klauder for the United States Trustee's Office. We're kind of a new player to this dispute in the sense that this is the first time we've actually filed some paperwork related to the debtors' extension of exclusivity. Of course, we've been involved in the case monitoring it from the beginning, and we did so after some considerable thought of whether it's appropriate for the debtor to have another extension of exclusivity and from a - what I would hope everyone would believe to be a neutral party in these matters, we believe that another extension of exclusivity is not warranted here. I want to focus in on the hearing that was held on the 9th motion back in September, and in particular, Your Honor's ruling with regard to granting of that extension, which was 10 months ago. The Court ruled in favor of the debtor and permitted another extension of exclusivity. At that time, though, the Court made it clear that the parties were to continually meet and confer, possibly meaningful negotiations would develop from that in the hopes of resolving all the

issues amongst the parties. The Court also made it clear that the debtor, and in particular their counsel, was to be the initiator of those discussions. I think the term the Court used was "The debtor is to take up the laboring oar with regard to those meet and confers." I'm sure this Court had other cases in mind, some of the other asbestos cases, where major disputes were resolved, acrimonious relationships were mended after such negotiations. So, I feel confident in saying that this Court contemplated global negotiations even though the debtor in their reply brief takes the position that such negotiations are pointless. Also when that ruling was made, it was the belief that the estimation proceeding would be tried and resolved by July 2007, and that the plan process would follow shortly thereafter. At that time, the debtor argued strenuously as they do today, that the estimation proceeding was moving forward in a positive manner. Yet, here we are today, 10 months later, and we are no closer to the estimation trial then we were back then. We are no closer to confirmation than we were back then, and there are no negotiations being held that would serve to get this case to a consensual resolution. I suspect that that was not what the Court contemplated 10 months ago when Your Honor made her ruling extending exclusivity. The Court made that ruling under the direct of future negotiations and with a believe that a plan could be brought forth by the summer of

2007. The question I asked then is how's it possible for the debtors to credibly show that a feasible plan within a reasonable time is possible for that is the standard, and the debtors must show that. I would argue that such a showing is not currently possible. It is unreasonable to believe that the standard has been met when the debtors present a request for an indefinite exclusivity extension that appears to benefit only their interests and will cause this case to proceed without a confirmable plan for well over another year and probably longer. Because it is, the United States Trustee believes that another exclusivity extension is not warranted. Briefly, Your Honor, as we noted in our objection, a couple of major issues that we see in this case and as it relates to this extension request, there are no negotiations being had and there appear to be none on the horizon. There's a lot of back and forth as to whose fault that is, but that's really not the - that's not the important point. The important point and bottom line is that those negotiations are not currently being had. The status quo in this case is litigation. There's no question about that. This case is very litigious and very acrimonious, but it's important to note that in that current posture, negotiations are not being fostered. The United States Trustee believes that the current state needs to change. Six and a half years this debtor has remained in bankruptcy with exclusivity is

far too long without having presented a confirmable plan to this Court. I would note, as we noted in our objection, Your Honor, the current congressional mandate is 18 months for a debtor to have exclusivity. Now I understand that those amendments don't apply to this case, but it is instructive. It is persuasive that Congress looks at it under 1121, Debtor, you get 18 months, and then the playing field is even and other parties can weigh in and file competing plans. There is a believe, certainly, the asbestos group has expressed this belief, that terminating exclusivity may get us closer to confirmation and may foster negotiations that are currently non-existing. One other issue, Your Honor, as we noted in our objection and is of serious concern in our office, is the professional fees that have been incurred in this case. Most recently at incredibly high levels, the monthly burn rate on professionals fees continues to increase. A quick review of the docket on the last interim fee application requests that were approved, which was from October '06 to December of '06, 17 million in allowed fees were approved by this Court. Creditors wait for money. Professionals continue to get paid consistently, and that is a concern to our office. Your Honor, we take this position as a means to change the status quo and get this very old case to resolution. Terminating exclusivity puts other parties on equal footing to either foster a consensus or have

this case put on a track to a swift resolution. It is the United States Trustee's position that the debtors have not met their burden here, and that exclusivity should not be extended. Thank you.

THE COURT: Anyone else? Mr. Bernick?

MR. BERNICK: If I could ask for a little bit of clarification. I know that there were others who submitted oppositions to our motion for extension. I know, for example, that the Asbestos Claimants Committee has done that. I know that the PD Committee has done that. I know the individual PD claimants have done that, and I guess I'm just a little concerned that what's going on is that I'll deliver my remarks and then we'll finally hear from all these people, and then I'll have to stand up again.

THE COURT: Well, Mr. Finch asked to speak after you. So I gave him that opportunity, and he's the only one who's asked. So, as far as I know, he's the only one who will speak after you. Anyone else wish to be heard before Mr. Bernick speaks? Okay, Mr. Bernick, you and Mr. Finch. That will be -

MR. BERNICK: There are a number of things that have been said in a relatively short period of time that I don't believe are fully germane here, and I'm not going to spend a good deal of time really responding to them. There were some arguments that you heard from Mr. Frankel about the

estimation reports themselves and whether there's a need for 524(g). I guess all those things will be dealt with in due course, and I know Your Honor's familiar with the expert reports, but I don't think those are really before the Court here. What's happened to the expert reports is pretty much what Your Honor has predicted, which is there are significantly different visions of how to deal with the problem of estimating liabilities and depending upon how hard Your Honor comes out on that, both on the law and on the facts, that is precisely the kind of clarification I think everybody has to agree is going to be extremely important in determining the future of the case. So I'm not going to dwell on that. I would like to respond briefly to some of the statements that have been made about the negotiation process, and you've heard from the U.S. Trustee and we've heard from the Futures Claimant Representative. The U.S. Trustee, with all due respect, has not been involved, I think, in any of the negotiations that have taken place for very good reasons, that so, and I'm not being critical. I'm just saying that that's information that's not known to the U.S. Trustee. The reports that have been made to this Court on the progress of negotiations have been deliberately circumspect so that we don't get into a lot of the substance and detail of those discussions, and for that reason as well, the U.S. Trustee would not be familiar with a lot of the

details of those negotiations. We have heard from the Futures Claimant Representative, and the FCR has from time to time been involved, but it's interesting that we always hear from the Futures Claimant Representative at the time of exclusivity and we hear essentially the same thing, which is the Mr. Austern's being a good guy, and he's going to bridge the gap, and it's just that others are just sitting there and they're saying, Well, gee, that's interesting, but we're not going to respond. And that is an extremely partial, incomplete, and misleading characterization of the facts. The fact of the matter is that this is a multi-party negotiation process and an extraordinary complex one for all kinds of reasons that Your Honor already is familiar with and probably for more that you haven't had the pain of having to deal with, and I hope never shall, but there are many, many different parties to this negotiation. There have in fact been efforts to have global resolution as our papers point out. They've pretty much not come to rest, and they've not come to bear any fruit, and for probably a pretty good reason, which is that if you put one constituency in charge of somehow developing a consensus view of what the answer should be as against the other major constituency, lo and behold, all of the people who are of like mind that the debtor has no equity, they all agree that the debtor shouldn't have any equity, and the only question is how to

whack up the pot. And so, all of the tensions between them, that is, how much their claims are worth, what they should be paid and the like, are all resolved by saying, Well, it's the debtor's problem, the debtor must be wrong. And as a result, you end up with a global number and the global number is way too large. It's not something the debtor agrees with or the equity agrees with or the unsecureds agree with or, for that matter, that the marketplace agrees is an appropriate valuation of the asbestos liabilities here. So that process was given a run both before the mediation and during the mediation and since the mediation, and it hasn't worked. So, what the debtor has done, and with the acquiescence of those who have participated in these discussions, is to work with the PD claims, principally, by way of negotiation. Indeed, the information that the debtor received was that it was the PD claims that were driving the number to the realm of not being appropriate. So, we have focused very heavily on the PD claims, and one of the important changed facts that has emerged for the better since the last extension was granted is that 4,000 PD claims have now gone down to something like over 200 claims that have yet to be resolved. There are active settlement discussions. There are settlement agreements that have been reached, and there's been very active litigation that we believe will come to an end at a relatively near point in time. Indeed, it is our observation

that with the motions for summary judgment that have been filed, depending upon Your Honor's disposition of those motions, we may be very much towards the end of the PD process itself. Your Honor also has looked at ZAI. There's an opinion on ZAI that's very instrumental, and you would think that with those developments that would do something to break the logjam on the overall number, and unfortunately, this is what I'll say in response to Mr. Frankel's remarks, Mr. Frankel thought it was appropriate to say that Mr. Austern made a second offer and a second demand, kind of, here's where we think the overall numbers are, and that there was a follow-up conversation. The result of that was that we would not be making a response, and that's just not really quite true. What it was, was that in the interim, indeed, very shortly after that proposal had been made, Your Honor ruled on ZAI, and the question is, now that Grace is going forward and litigated PD claims, traditional claims, and ZAI claims and those were part of the overall number, what impact did Your Honor's rulings have on that number, and the answer coming back from the PI people, was nothing. It had no impact. Now maybe that's because they still adhere to their 8515 deal, which basically says, they get all of Grace's equity, and they then whack it up 8515, and if they don't recognize in that deal that if Your Honor disallows claims or finds that they're not meritorious claims, that that has an

impact on the allocation, and we've talked to Your Honor briefly about that on several occasions. Your Honor's been very clear that Your Honor's orders are the orders, they're the rulings, and that deals call for the payment of claims that are disallowed or substantially impaired on the merits in some fashion, those ruling are designed to be material to the process of this bankruptcy, not simply advisory opinions by the Court. I don't know why after all of the efforts and all of the litigation and all of the resolutions have been done, the PI constituency continues to believe, notwithstanding what they told us historically, that it has no impact on their position. Maybe it is the 8515 deal. Maybe we ought to focus on that because apparently Your Honor's comas have, and I'm sure they've been seriously considered, but they haven't had much impact. But the point is, this is all complicated stuff, and because it's complicated stuff, we tried to pursue contacts wherever we can, and Your Honor told me that I was responsible for taking the laboring oar on that. I could take Your Honor through literally a list that goes into pages of communications, contacts, and meetings involving a variety of individual players and players acting together over a period of time to keep these discussions alive. They don't necessarily involve the Future Claimants Representative, in part because he told us that the people to deal with best on the current claims

would be the PI people. So we focused on the PI people for the current claims. PI people, of course, want to talk about the overall value of the deal as well. So, it's not always Mr. Austern, although we've reached out to Mr. Austern. It's not always Mr. Baena. It's maybe people who are constituents in his Committee, and of course, the U.S. Trustee is not going to know about any of that. No, we think that that is the best way to go. We think that that is the best way to produce resolution of different parts of the case, and we have actively pursued that. We pursue it. We have conversations every single week. We're not waiting for exclusivity, and I've been asked not to go into the details of these conversations in part because people don't want to have names named. So, I'm not gong to name any of them, but it's inappropriate to be arguing, as has been said here, that somehow the debtor has hutzpa because we're coming in and asking for more time while what's happening behind the scenes is that people are taking positions that are not necessarily consistent, but in any event, we're talking with everybody who is willing to talk with us. There is a central truth at the bottom of all the negotiations, very, very simple, and that is what people have said in their papers is true. What have they said? They have said that they disagree about the value of PD claims, so we have to litigate those, and we're now in settlement, and we're now coming to understand what

that nut is. People have disagreements about the value of the personal injury claims. That's why they're not reaching agreement. Well, the best way to cut that, the best way to get to the core and get this think off the mark is in fact, to have the litigation to determine what the value of those claims is. We're prepared to sit down at anytime. We're not waiting for the result of that. At the same time, just like any piece of litigation, the best way to explore options for settlement is to keep the people on track for a trial. God knows it is a difficult process. It's taking a toll, I think, on everybody, but right now there does not seem to be another answer. The suggestion that somehow we ought to go back and focus on issues of impairment in 524(g), and, you know, the idea that somehow because the debtor believes there's equity and the market believes there's equity, well, we don't need 524(g) - Well, that doesn't go anywhere at all. The question is, what is the reliability of the ability of the debtor or any other constituent to actually deliver on a number. It has to be recognized in the law, otherwise the marketplace is not going to pay any attention to it. So, to say, Well, we don't really need it because our expert reports say that we're solvent doesn't really advance the cause. What about the issues of impairment and the vote? They haven't changed. Your Honor's commented about them before. Commented on how long it would take to actually get those

matters resolved. Once the estimation is over, it wouldn't take very long. The fact of the matter is that those are issues that don't really have traction until we have the backdrop for the numbers of what these plans actually look like. The plans have not come to rest. The last time we argued exclusivity Mr. Frankel was saying, Gee, they probably modified their plan in light of what Your Honor was saying. They might not stand by the 8515 deal. Well, if the plans aren't coming to rest, the legal structure is not coming to rest, and the facts are not coming to rest, what's the point in having an academic debate about a bunch of legal issues? It is a distraction. Your Honor said it was a distraction before Judge Buckwalter agreed. We have to stay the course. Get done with the PD litigation which happened this year. Get done with the estimation, and all the while, look for options in order to explore an answer to the case. What about timing? And, Your Honor, if I can approach just briefly -

MR. FRANKEL: Your Honor, if I could just be heard a moment on these. These were just circulated last night. We do have a rule in this case that they're supposed to be circulated the business day before the hearing. I just want to point this out. The rules should be the same for the debtor as for everybody else. We circulated ours on Friday.

MR. BERNICK: Your Honor, with due respect to Mr.

Frankel, we did get theirs on Friday. All that these are are markups in order to have Your Honor see how an issue is joined on different parts of their timeline. Where I come from, just because you've got one set of demonstratives doesn't mean that they can't be questioned or dealt with in the course of the hearing.

THE COURT: All right, Mr. Bernick, go ahead.

MR. BERNICK: Thank you. And I don't really think that this is a particularly big deal. This is the demonstrative that they show you as their timeline and that is very consistent with what they've said before. All that we pointed out here is that that demonstrative and that timeline is fundamentally inconsistent with what it is that Your Honor has said before, which is, instead of having these hearings here, we've got to have estimation first before you can even come to rest on what the plan is that's at issue. The progress has been made, and it's important - more important to focus on resolving the outstanding issues. As to amendments, the amendments are not that difficult to make under any set of circumstances. But what I'm focused on here, and maybe - and we'll take responsibility for being less than clear about this, is that there's a lot of ink that's been spilled on these charts to show, Oh, well, my God, we're going to be in exclusivity forever, and that's not what our intent is. We said, We should wait for the Court to

issue a final ruling. Now, we use the word "final", and I leaned over to Ms. Baer and said, Do you mean final in the sense of all appeals are exhausted? That was not our intent. What we said, what we meant to say was that once the Court rules, once Your Honor rules on the personal injury estimate that at that time, as Your Honor always has contemplated, there would be an opportunity for the debtor to file plans in order to make a proposal. Maybe at that time Your Honor would say, as you created the latitude to do the last extension of exclusivity, then you'd allow other plans to be filed as well. We're not foreclosing that possibility. So, what we're asking for is exclusivity until Your Honor issues your final ruling on the estimate, and at that point in time, there are options. Maybe that does go on appeal at that time. They've assumed that it does not. Well, why wouldn't it? Maybe it should, maybe it shouldn't. And then whatever is going to happen - there may be competing plans. Maybe there's no appeal on the estimate, and we have hearings on competing plans, and then the appeal is taken of all matters that go into whatever order of confirmation or whatever order Your Honor determines. All that we're looking for in this hearing is essentially exactly what we asked for the last time around, which is to let the estimation process run its course, to do so with some semblance of peace, and then come back and be able to modify our plans, which Your Honor can

deal with the legal issues in the context of concrete plan proposals. The only other thing that I'll add, Your Honor, is that as I indicated, there has been a lot of - there had been a lot of developments, and I want to make sure that they are a matter of record. What has happened since the last time? Well, obviously, the exclusivity decision was affirmed. They took the choice to appeal that, and they're still appealing that exclusivity position all the way to the Third Circuit. I guess they're interested in having the Third Circuit take a bird's-eye view of the case. We'll see what happens with that, but they did make that determination, and Judge Buckwalter agreed fourscore with Your Honor. Number two, there's been very substantial progress on estimation. The questionnaire objections were litigated yet again. The PIQs were supplemented over an extended period of time. There's litigation over the need - the desirability and entitlement for discovery purposes of bringing the x-rays, actual x-rays to bear. We asked for 6,000 x-rays associated with those people who had lung cancer and claimed it was asbestos related. We litigated that. Your Honor ordered that they be produced. We got about half of those, and we've now had the opportunity to have a double blind review of all those x-rays, those people who don't know for whom they're doing it. Don't know where the x-rays come from to see if the plaintiffs' results are even replicable, which

is exactly what the ILO B-read standard requires, which ought to be a threshold matter. That's been done. The B-reads have been litigated. Some of them have been submitted, many others have not been submitted. We're pursuing that. Expert reports have been submitted. The ZAI appeal was taken, and in the context of that appeal, Your Honor, the central - what they characterize as a central legal issue, which is whether in the City of Grenville case, it was enough to show simple contamination in order for a case to proceed or whether, as we argued, that asbestos property damage is a product liability claim like any other. There has to be defect. The defect has to risk related, has to be some risk. They argued that. They chose to take that issue to Judge Buckwalter knowing that he'd reject the appeal, but he rejected the idea that City of Grenville was consistent with their position and inconsistent with ours. The PD litigation has been advanced. There's been, obviously, litigation over lack of authority, product ID, statute of limitations, motions for summary judgment have been filed and briefed. We do believe we're towards the end. PD claims have been resolved, 4,000 goes to 260 plus. PD settlement discussions continue. PI settlement discussions, less progress, but they do continue, and I'll say that they're not just the debtors participating in this. Equity representatives are also participating directly in these discussions. Negotiations over Libby cleanup costs

continue, and non-asbestos claim resolution continues. So, we've made very substantial progress on a number of fronts. It is very difficult sledding, but we believe that these facts underscore the wisdom of Your Honor's prior decision to extend exclusivity, and we ask for a parallel extension through the end of Your Honor's final ruling - with respect to Your Honor's final ruling with respect to PI estimation.

THE COURT: Mr. Finch.

MR. FINCH: Briefly, Your Honor. The fact is, we haven't said what kind of plan we would file, but the timeline laid out by Mr. Frankel would resolve this case far quicker than whatever the debtor is proposing. Secondly, the difference between this and a big piece of litigation where you, you know, there's a big gap that bridges the parties, and a big piece of litigation, you can get to a trial, and if the plaintiff wins, you get a judgment, you get some money out of the defendant. Here, as long as exclusivity is tying this case up, the fact is that the debtors have the asbestos constituents in an uneven bargaining position, and that's what Congress deliberately chose to not have a debtor be allowed to do indefinitely. And that's exactly what's occurred here. There is a gap, but the debtor by actions and conduct has made it very clear that it is perfectly happy to sit in bankruptcy, and the commercial creditors and the equity aren't disadvantaged by that. If they get tired of

waiting for their money, they can sell their shares or sell their debt on the open market. My constituency, the personal injury claimants, they can't sell their shares. I mean, they are injured by the exposure to debtors' asbestos products, and they are stuck. They're involuntary creditors, and they cannot leave this bankruptcy by any virtue other than the bankruptcy ending, and therefore, it is fundamentally unfair to continue exclusivity in the face of that, particularly when Congress has made it clear again and again that exclusivity should only be continued for a very short period of time, and it's been clear in whatever negotiations have happened, which have been far less on the PI side than Mr. Bernick would have you believe, that unless and until exclusivity terminates, there's not an equal bargain position. That's the difference between this and a big piece of litigation that is not in bankruptcy, Your Honor. In order to have a level bargaining table between the plaintiffs and the defendant, you can't have exclusivity as a big huge cloud over the whole picture.

THE COURT: Mr. Frankel, do you have anything you want to add. I'm going to give you and Mr. Klauder a short opportunity to speak since Mr. Bernick addressed your remarks, and then I'll give Mr. Bernick the last word.

MR. FRANKEL: Your Honor, the only thing I want to say is, we have said nothing in any of our papers in this

recent round about our agreement with PD or what our plan would look like. I think Mr. Bernick wants to keep harping back to that because he would prefer to attack a plan that may not be confirmable when he has one on file that is not confirmable. We don't know what the - I've said it before, Your Honor, just now. We don't know what the plan would look like. We think the right to file the plan though is what's before Your Honor, and it's what Your Honor should grant today.

THE COURT: Well, Mr. Frankel, I guess my concern still is the concern I expressed before, and that is, I still think you and everybody else are of the same mind, that we need to get this estimation issue resolved. And once this estimation issue is resolved, then I'm not so sure that the concept of a level playing field, one way or another, and I don't know exactly what that means at the moment, but, yes, the doors at some point need to be opened, but I'm not really sure anybody can actually file - I'll use your words, a "confirmable plan" until we know what that estimation number is going to be. So, I guess the question is, harm. What's the harm in keeping exclusivity going until that number is determined at least by me. I mean, you know, maybe everybody will decide that I'm this brilliant jurist and no one will appeal that issue. Otherwise, maybe everybody will appeal because what usually happens in the bankruptcy world, my

number won't make anybody happy, which is what generally convinces me that I've got it right, because everyone appeals. So -

MR. FRANKEL: Your Honor, I would say two things in response to that: First of all, it is clear that what Congress intended is that there should be a level playing field in the negotiation process. For whatever reason, and we don't have to point fingers here, for whatever reason, six and a half years later there is no consensual plan. That alone, I would suggest to Your Honor, would be a basis for lifting exclusivity at this point. Secondly, Your Honor, I think that the level playing field will continue - the absence of a level playing field will continue beyond the estimation order if we do not have the right to file a plan, and I say that because, at this point -

THE COURT: Wait, I'm sorry, state that again, please.

MR. FRANKEL: If exclusivity is not lifted.

THE COURT: Yes.

MR. FRANKEL: We would not be able to file a plan even after the order on estimation. Right now, if exclusivity were lifted, even if we did not file a plan tomorrow, which we will not, we would file a plan and have it ready so that once the estimation is decided, whichever way it's decided, there's a confirmable plan that can go forward.

Right now, what we have is the debtors' plan. Your Honor rules on estimation. Let's say that Your Honor agrees more with us than with them. They certainly will appeal. We will not have a plan on file. The case will be stalled again. If they are right and the estimation is closer to their number, their plan will go forward, but it's not confirmable. Mr. Bernick says it's a simple matter to amend it. Well, it's been two years, and they have not amended it. We don't believe they're going to amend it to make it confirmable because that would require a vote. That's what they're seeking to avoid. We need to have a plan on file that will also change the negotiations.

THE COURT: But, as I understood it, maybe there is not a complete plan in that maybe there is not a complete term sheet with all constituents, but I thought, based on the representation that's been made several times on the record that at least between the futures, the personal injury, and the property damage, which from your side of the courtroom, is the largest constituency in the case, there was some consensus. So, you know, if I open exclusivity, as I understand what you would try to do, you would try to get somebody on the other side of the table to start talking with you, which is exactly what Mr. Bernick, sitting on the other side of the table is saying he's trying to do, you know, with your side of the courtroom. Basically, what I have is three

parties aligned on one side and three parties aligned on another, and having appointed a mediator and charged Mr. Bernick with trying to get this logjam broken and everything else that's gone on, nothing has happened. I still have the same alignment that has happened since the outset of the case. I'm not sure why terminating exclusivity is going to make any difference in that. The debtor and the equity are convinced that there is something for equity, and the rest of you are convinced there isn't, and until there is a number that determines estimation one way or another, at least at my level, regardless of what happens on appeals, at least at my level so that there can be a number that people can at least start to work with, if you can't negotiate because you folks, all of you, negotiate all the time. That's what Chapter 11 is. It's a bargaining tool, and you all work your way out of these logjams in every other case that I've seen you in - Well, that's not quite true. In almost every other case that I've seen you in, you've worked your way out of these logjams, but in this one, because this estimation issue is so fractious, you have not been able to work your way out of it. I don't think lifting exclusivity is going to have a thing to do with that.

MR. FRANKEL: Your Honor, I respectfully disagree. I think that the exclusivity is one of the obstacles that we have to a consensual plan right now because we do not have

the threat of filing a plan. All that we have is negotiations over negotiations, and if we had the right to file a competing plan, we think that would change the dynamics of the negotiations. Would it result in a consensual plan? I don't know. I know that that's what we would attempt to do, and I do believe that the dynamics would change with all of the parties that are in the courtroom if there was a right to file a competing plan. With respect to what Your Honor said earlier about the agreement between PI and PD, a lot of things have happened since that agreement was announced, including Your Honor's ZAI decision. I do know this, if we had the right to file a plan, we would be sitting down with the PD Committee, the PI Committee, the Futures Rep. It would not take long to either decide that that's the agreement, to decide what the right agreement is, but at this point, we have not even discussed that issue because again, we do not have the right to file a plan. It will change the dynamics dramatically, I believe. I also think, Your Honor, that that is exactly what Congress had in mind. I'm not talking about the recent amendments, that's obvious, but all of the issues with respect to when you raise exclusivity, when it's enough is enough relates to the negotiating posture of the case, and we're at a point where there is clearly a stalemate. There is no doubt, nobody would say differently.

THE COURT: Okay.

MR. FRANKEL: Thank you, Your Honor.

THE COURT: Mr. Klauder, anything else on behalf of the U.S. Trustee? No. All right. Mr. Bernick?

MR. BERNICK: Just very briefly, and I appreciate the dialogue that Your Honor has had with Mr. Frankel, and I appreciate the candor of Mr. Frankel's remarks. I think that a lot of what he says is - I know it very clearly expresses the view of his side of the courtroom, and I think his remarks are thoughtful. I guess the statement that there really is an impasse, that is a truthful statement in a lot of respects. I, though, believe that we tend, obviously given the adversarial nature of this process in many instances, can take a snapshot of where we are, really believe that nothing can really change, and I think that actually history has shown that that's not so. History says that we were extremely close at the end of '04, very, very close. It didn't work out for reasons that are still not overwhelming clear to the debtor, but it didn't work out, and I think that people thought at that time that it was close enough that it would work out at some point fairly soon. It turns out the change there was for the worst. That didn't happen. It didn't get back together again. We then had the mediation, and there was hope that the mediation would produce a result, and it did produce a result, but it was a

result that was nothing like where we had been in '04/'05. It was one side being together with the 8515 rule, and at that point, everybody showed up in court, indeed it was this court, and talked about how, Well, this is the best thing that's going. This is a major development in the case. It really ought to drive everything going forward. And indeed, it drove the arguments that took place on exclusivity. Well we now know today, this is where again Mr. Frankel's been very candid, that that turned out not to be true either. He very candidly says, they would have to have a discussion about whether the 8515 deal is really viable any more, presumably in principal part as a result of comments that Your Honor has made, but also because of the progress that's been made in the case, that things have in fact changed. So what seemed to be an un-breach able wall, no handholds, no nothing, 8515 deal, we're going on and getting it done, turns out not to have been the case, but this time for the benefit, that is, in other parts of the case, have come closer to resolution. So, if the 8515 deal is not the deal, we've heard from Mr. Speights that he believes that the 8515 deal, I think he said so here in court, is still very much what they believe governs the case. Why shouldn't there be a discussion to see whether that really is true? It doesn't have to have a termination of exclusivity to have a candid discussion between the PI and PD constituency so that it's

not a barrier. So that if it's not there anymore, it's not there anymore, and we can pick up and go on from there. I also believe that the same thing applies to Your Honor's estimation proceedings as we get close to this trial. I think everybody is learning a lot, not necessarily things that they didn't suspect, but it's being put down on the record, and while Your Honor candidly acknowledges that there may well be appeals by both sides, we don't know what that process actually is going to produce, and it may be that where Your Honor comes out, which nobody can really predict, we'll end up having some significant effect on the logjam, and maybe we won't have an impasse. Nobody is that good at making all these predictions. All you can do is to keep the process going and then hope that by cracking the whip and making sure that people are doing their jobs that the discussions continue. And I know that the debtor and I know that the other plan proponents regard it that way. They are open to any and all changes that take place, but I do think that there's no reason why at the very least we should stand by what is now, you know, an artifact, which is the 8515 deal. If that's no longer the deal, we should know it's no longer the deal, and maybe that will have some effect in freeing up the discussions. The last thing I would say is that there really is still, I think, a major disconnect on - also on the law. Their assumption is - they don't have a

plan, their assumption is that if exclusivity were terminated, that they'd be able to propose a plan that would be in something like its final form even before estimation, and it would be confirmable whereas the debtors' would not. And I think that there still really is a disconnect here. Unless there is a consensual plan, it is very difficult to see that any plan will be confirmable in the sense that it will not be subject to any kind of challenge. Whatever happens, they will say that can outvote the debtor and its constituency, and whatever happens, if there's not agreement, the debtor will say only and to the extent that you can demonstrate that the claims are being neither overpaid nor underpaid. So, we're always, from a legal point of view going to end up being focused on the question of what is the value of these claims. So, I don't mean to dwell on that. What I really got up to say is, I don't think that anyone is so smart that they can make predictions about how long this is going to go on or how hopeless one path is or another. We'll continue to work. We will not abuse the privilege of having more time in exclusivity. I do think it would be important to get some feedback on whether the 8515 deal is not - but in any event, we should not have distractions before the estimation is done, and I thank you, Your Honor.

THE COURT: Okay. I'm going to think about this at least until the end of today's hearings and maybe a little

bit longer, but I will give you a ruling later. Let's get onto another issue.

MR. BERNICK: Your Honor, we would go forward - I believe I'll turn the podium over to Ms. Baer. We intend to follow the basic order of the agenda up through item 11, and I think that leaves us with 8, 9, 10, and 11, and then we do lawyer discovery. So it will be the New Jersey matter, item 8; Washcoat sale, item 9; and then we'll have something that will probably take a little time which is the terms of Your Honor's stay order on BNSF.

THE COURT: All right.

MS. BAER: Your Honor, as agenda item 8 is New Jersey's motion, I will let them take the podium first.

THE COURT: Yes, thank you. Good afternoon.

MS. LEHR: Good afternoon, Your Honor. If ever there was a case where a late proof of claim should be allowed, this is it. There is really excusable neglect here - Excuse me, I'm so sorry, I have such a bad cold. The debtors' own actions are what caused us not to have a claim in time for the bar date. Of course, if it weren't for the debtors' own actions, there wouldn't have been a claim anyway. New Jersey depends on self-reporting in our environmental laws. The certifications that come at the end of questionnaires that responsible parties, owners and operators fill out, it's not a joke. It's what we depend on.

We cannot be everywhere at all times. We don't have the resources either human or financial. And to lie on a certification, to swear that you've given true information that no hazardous substance was used above a certain level, is a crime of the fourth degree, which we're just doing civilly for civil penalty, but there was no way that we could have know about this at the time of the debtors' bar date. We only found out what when the EPA did some investigating at sites that were using vermiculite ore from the Libby, Montana plant where they had found great problems, and the EPA did this investigation. The EPA discovered this, and even after the EPA discovered it, it took time before we put together that the debtor had lied on the certification. The objection that the debtors have filed to our motion is hard to believe they could have read our motion and written that objection. There's hardly any relevant fact in it or there are some things that are just clear misstatements. In the very first paragraph the debtor claims that we never claimed in our motion excusable neglect. That was all we talked about was excusable neglect in our motion. The claim that we are making is not for the contamination at the site, it is for lying about the contamination at the site whereas the debtor claims that the contamination is the basis of the - it isn't. We're not cleaning it up. We're not looking for Grace to clean it up. The EPA has taken over the whole site. We are

only assessing a penalty for lying, swearing, perjury is what it is, and of course, the debtor used that old standby that we filed the complaint in violation of the automatic stay. There is so much case law on the fact especially in the Third Circuit, that filing our complaint in state court under our police power is not a violation of the automatic stay. We can litigate for the money for the penalty, just as we could litigate for the money to fix liability for cost recovery. That's all it is. It's a trial to fix liability just like your estimation hearing. We will not try to grab the money out of the debtors' hand. We know we have to wait along with all the other creditors, but it is not a violation of the automatic stay to sue to fix liability, and the debtor also filled 18 pages with irrelevant facts. It talks about having spent $4 million making sure that everybody was noticed about the bar date. The State of New Jersey has never claimed not to know about the bar date. It has never claimed not to know the debtor was in bankruptcy, and the in the objection they used so much time and energy, and as the U.S. Trustee pointed out, money, writing things that have no relevance to our motion. They do point to a memo that was received by Robert VanCausen (phonetical), an assistant director of emergency response elements. It was an internal EPA motion - EPA memo, rather, saying that from one EPA person to another, just copy to Bob VanCausen among 20 other people saying that they

wanted to do sampling and investigation of the Hamilton Grace site. That was a great leap they made that the DEP receiving that memo, a copy of that memo, we see thousands of these things every day, should have alerted us to the fact that Grace had lied and certified to false information on their ISRA submissions. We did not find the ISRA submissions until at least another six months. That date isn't sure, but it was six months after the bar date when somebody was asked to comment on a report by the Department of Health - Human and Senior Services, I guess is what it's called now, to comment on a report of testing that was done at the Grace Hamilton site. That was when they first put two and two together or began to, and that was in the fall of 2003, six months after the bar date. I also don't think they read the complaint carefully as well as not having read our proof of claim or our motion, our briefs in support of our motion because they talk about $800 million. Our proof of claim is for $31 million. I don't know where they got $800 million from. There's something about this case that reminds me of the story about the little boy, or the little girl, I guess, child is what I should say, who killed his parents and threw himself on the mercy of the Court because he was an orphan. Grace concealed this information from us and now says it's too late for us to file a proof of claim.

THE COURT: Well, you found out about the bar date

in 2003, but I'm getting a motion to file a late proof of claim in 2007.

MS. LEHR: That's right, because for awhile there we thought we filed the complaint in state court and thought we would fix liability. We didn't think about filing a proof of claim. We thought of fixing liability, the bar date was over. Actually, it's an informal proof of claim because the debtors now had notice of the claim against it by us since the day we filed the complaint which was two years ago.

THE COURT: Informal proofs of claim if you filed an adversary in this Court maybe, but by filing a proof of claim in a state court that doesn't constitute a proof of claim before this Court.

MS. LEHR: No, no entirely, but it does give the debtor notice of our claim.

THE COURT: But that's not the relevant standard for filing a proof of claim. That has, you know, whatever notice the debtor has, that doesn't subject you to the jurisdiction of this Court.

MS. LEHR: I understand that, Your Honor.

THE COURT: Filing of the claim does.

MS. LEHR: But one of the important reasons for any filing of a claim is to give the debtor notice. And the debtor has had notice for two years even though at the time we may have been two years late. I mean, the filing of - it

isn't prejudicial to the debtor because they're nowhere near having a plan.

THE COURT: Well, the debtor has a plan on file.

MS. LEHR: It seems like it's going to be three years - Pardon?

THE COURT: Well, the debtor has a plan on file. The others contend - some other parties contend it's not confirmable but there is a plan on file.

MS. LEHR: Well, it hasn't been confirmed.

THE COURT: No, it hasn't.

MS. LEHR: And it doesn't seem to be near being confirmed. So I don't see any prejudice to the debtor at all. It's just that - the first thing that we thought of, unfortunately, and I guess that's where the excusable neglect comes in is that in the first minute that we found out we didn't automatically file a proof of claim. It took time to write the complaint. It took - Things don't happen overnight here in the Division of Law in the Attorney General's Office or in the DP, and that's why it took that long to file the complaint, and then we really thought that we'd either litigate it, get a judgment, and file the proof of claim, or really what we thought was that we would settle it. We thought the case would settle. We didn't think it would really be litigated. And if we had settled, and the debtor had not objected, you know, that would have made - we would

have filed a proof of claim at the time that we fixed the penalty.

THE COURT: Well -

MS. LEHR: But see, I don't think excusable neglect comes into not knowing. We couldn't possibly have known on the day of the bar date, we could not possibly have known that we had a claim, but so the excusable neglect really comes in, as far as I can see, in not having done it all a lot faster once we found out.

THE COURT: Well, the debtor says that you were listed in New Jersey - not you, I apologize, that New Jersey was listed as a creditor and identified as having a contingent disputed and unliquidated claim.

MS. LEHR: Debtors do this all the time, Your Honor. We do not consider -

THE COURT: But that's what -

MS. LEHR: No -

THE COURT: - puts you on notice.

MS. LEHR: No. We don't - Oh, but we had no claim. No we knew about the bar date. We knew we were listed, in fact, I've had this very argument with Ms. Baer years ago because we have case law, the Torweka (phonetical) case of the Third Circuit under ISRA, where there's no alternate payment, no alternate right of payment, that is not a claim. It is the debtors' obligation to comply. In this case they

had financial assurance which we used to clean up the site that we were interested in, in 2001. So, whatever we had left after that, other ISRA cases, I don't know whether we had them or not because we had no problems with Grace over them. They are not claims.

THE COURT: But then, you have a claim. You're filing a claim for civil penalties.

MS. LEHR: Now, I'm filing a claim for a penalty -

THE COURT: Right.

MS. LEHR: - but we had no reason to think that Grace had done anything that would warrant a penalty back at the time of the bar date.

THE COURT: But that's what getting notice of a bankruptcy requires you to do. It requires the creditor who gets the notice to investigate the claim. That's the purpose for listing the creditor in the bankruptcy schedule.

MS. LEHR: But that is not the claim, Your Honor, that they listed us for. They listed us because they thought we - because of their contaminated sites.

THE COURT: Well, it's the same thing. You're -

MS. LEHR: No, it isn't, Your Honor.

THE COURT: - claiming a penalty because of the -

MS. LEHR: A cleanup - A remediation we do not consider a claim. Either we want you to do the remediation, which is not a claim, it's injunctive relief. We do not file

a proof of claim -

THE COURT: No, I'm sorry -

MS. LEHR: - for remediation.

THE COURT: Yes, I understand, I'm sorry. I did not understand that the schedules listed the claim as a remediation claim. Is that what it says?

MS. LEHR: It did - I don't remember what it said, but it certainly wasn't for this penalty because we didn't know about the penalty. They wouldn't have admitted to the penalty back then.

THE COURT: But -

MS. LEHR: I mean, that didn't come to us and say, We lied. We swore to facts that weren't true, you'd better file a proof of claim.

THE COURT: If they list the appropriate agency as having, I guess, an unidentified - pardon me, disputed, unliquidated, and contingent claim, if that's all it says, there is a duty to investigate what that claim is.

MS. LEHR: Well, I'm sure -

THE COURT: But I don't know what the schedules say, so I think somebody's going to have to tell me what the schedules say.

MS. LEHR: Well we know that - Every debtor does that, Your Honor, and we know that they're just trying to make a claim out of their obligation to clean up.

THE COURT: But that's not necessarily the case. They're telling the creditor that from their books and records, they understand that there is a claim that you may have against them. It's then your client's obligation to investigate. It's not their obligation to investigate, it's the creditor's obligation to investigate.

MS. LEHR: Well, they were not thinking of this penalty when they wrote that. They were thinking of remediations that were required on sites that they operated on.

THE COURT: Well, I need to see the - somebody has to tell me what the schedules says. If it lists remediation, then I think that's a different issue. If it simply lists potential claim, I think the state's on inquiry notice. That's what the law in this circuit says, and if you're on inquiry notice, then you're on inquiry notice, and the state -

MS. LEHR: Your Honor -

THE COURT: - is not in any different position from any other creditor in that case.

MS. LEHR: In other words you think they knew they violated the law and that we were going to penalize them for it?

THE COURT: I don't think it matters what they knew. The question is, what did your client know. Your client is

the one that wants to file the late proof of claim and has to show the excusable neglect.

MS. LEHR: But not for anything that they knew in March of 2003 or whenever those schedules were issued.

THE COURT: Yes, as of the time that they got the first notice of the bankruptcy. That's when you're on inquiry notice.

MS. LEHR: And we knew they had a site that they sold and that they were obligated to comply with ISRA. We had a meeting about it. Letters passed back and forth about it, and I think finally in the one site that was my case, the new owner used Grace's financial assurance and did the cleanup for them, and that, I'm sure is what they meant when they filed for bankruptcy because those schedules must have appeared before we had this meeting and the letters went back and forth about the ISRA compliance at this particular site, but that was a different site, that was not this site, and that was the site that's already been cleaned up and taken care of. Whenever they put our name - I'm used to debtors putting us down all the time for things that we argue and so far have won, are not claims.

THE COURT: Well, to the extent that their issue is the remediation, I don't know that the issue is that's it's not a claim, but I do agree with respect to the Third Circuit law and the issues concerning the automatic stay and the fact

that you're going to be able to pursue remedies and so forth, so, I'm not so sure that I can say that it's not a claim, but I don't think it matters because of the dischargeability issues and the way they've been defined in the Third Circuit, but this is an entirely different issue. This is not even looking at remediation. I'm not even sure that this fits within the police powers to the extent that you're defining them because it's a civil penalty claim that isn't even looking at cleaning up.

MS. LEHR: Of course -

THE COURT: It's pure onerous penalty and for nothing, no purpose because it's not directed at enforcing the environmental law. It's simply looking at what you said as an alternative to a criminal sanction, in essence. It's a civil penalty and the nature of a criminal penalty because the debtor lied. It does not - looking at the environmental to a Torweka type of situation.

MS. LEHR: That's right, but there are just as many cases as I've cited in my response that say the penalties - Judge Garrett Brown's decision in Madison Industries where he said that filing the complaint in state court and asking for a penalty was not a violation of the automatic stay because penalties give teeth to our environmental laws. And this is important. It has to be more expensive for an owner or an operator of contaminated property to ignore the law than to

comply with it. That's where a penalty serves a good purpose because we cannot be everywhere, and perjury is a serous crime.

THE COURT: Well, but you're not arguing that there's a criminal sanction or -

MS. LEHR: No, I'm not, I'm not. We're arguing it's civil penalty.

THE COURT: But that -

MS. LEHR: But it says right on the paper that they signed that swearing to this false information is a crime of the fourth degree.

THE COURT: I am not disagreeing that perjury is a serious penalty. That's not what this is about, however. You're not arguing that this is not in violation of the stay because there's a criminal action that's being undertaken against someone.

MS. LEHR: No, no, but I'm arguing that it's not in violation of the stay because it is an enforcement under the police power of the State of New Jersey.

THE COURT: Yes.

MS. LEHR: And there is enough case law showing that whatever we do except grab the money out of their hands, is not subject to the automatic stay. After it's litigated, after we fix liability, and the amount of liability, then we wait in line with everybody else. That we would never argue,

but up until that point, we are exempt from the automatic stay.

THE COURT: Okay. I understand your argument.

MS. LEHR: Thank you, Your Honor. Will I get a chance to respond again?

THE COURT: Oh, yes, surely.

MS. LEHR: Thank you.

MS. SINANYAN: Good afternoon, Your Honor. Lori Sinanyan on behalf of the debtors. The State of New Jersey made several comments that I'd like to address, and I'll try to focus the argument on the factors that you focused on, Your Honor. The State of New Jersey states that with all of its resources, it should be excused from having filed a proof of claim when it first knew about its alleged claim when individuals with no resources are held to the same exact bar date rules. I don't understand, first of all, why there should be any kind of different standard because it's the State of New Jersey, and it's a bureaucracy that they have to deal with. Second of all, Your Honor, you - Well, let me rephrase. The New Jersey State Department had three distinct clear opportunities to file a claim. One was prior to the bar date. In November of 2002, as the debtors' objection clearly states, they received the EPA memorandum. The State of New Jersey mischaracterizes this as an internal memoranda. It was sent to several agencies including the New Jersey

Department of Environmental Protection. It clearly states and it quotes the alleged fraudulent statements that New Jersey based its complaint on, and it clearly states that based upon this 1995 report, the New Jersey Department of Environmental Protection issued a no-further action letter, and it continues with an expressed statement by the EPA that Grace's representations in the 1995 report were false and states the EPA's reasoning for why those statements were false. All any person receiving a copy of this EPA memorandum would have to do is read it. It was in black and white that the EPA believed that the representations that Grace made in its 1995 report were false, and that New Jersey relied on those in submitting a no action letter. This EPA memoranda was sent to two different officials at the State. In their response, they only addressed that one person received it and dismissed it. They don't even address that there was yet another employee, Janet Smalinsky (phonetical) who received a copy of this EPA memoranda and did not take any action on it. In several places in their response, indeed, New Jersey states that the EPA memoranda did not alert them to the existence of a potential claim. In fact, they say, it shouldn't have immediately jumped into one's mind. It's actually quite irrational for it to have jumped into one's mind, but again, and I can quote you the specific language, it clearly states in this memoranda that the EPA

believed the assertions made by Grace in the 1995 report were false. And one side note, because Grace has gotten in a way personally attacked here. Grace employees made these certifications based on an expert report that was a third-party expert report that was provided to them, and Grace made its certifications based on that. The fact that in the end it turned out to be false statements, I understand. We're not disputing that issue at this point. That's not what's in front of the Court, it's just New Jersey's way of trying to shift this Court's focus. Even if you ignore this EPA memoranda, which again, gives notice of the claim clear as day, in the fall of 2003, New Jersey has by its own repeated admission stated that it knew about its claim, and indeed, there's no explanation to say why they figured it out in the fall of 2003 as opposed to why they couldn't have figured it out based on the EPA memoranda. All they had to do at that point in time is say, Well, we're not sure exactly what kind of a claim we have, but we think we have something, a one-page proof of claim, something in front of the Court. It wouldn't have taken much effort on their part, yet they failed to do that as well. As the Court correctly pointed out, whatever they filed in the 2005 state court action, does not constitute an informal proof of claim because that case, the one case that they cite was a Chapter 7 case. It was based on a pleading that the creditor had filed in the

Bankruptcy Court, subjecting themselves to the jurisdiction of the Bankruptcy Court. Here, in fact, New Jersey tried to avoid the Bankruptcy Court's jurisdiction by filing something in New Jersey State Court, again, we'll maintain in violation of the automatic stay, but the automatic stay issue is not in front of the Court today and should not be argued. I believe that New Jersey wasted several pages in their response arguing the automatic stay. So what we have is their third opportunity to have filed a claim in this Court when they filed the state court action in 2005. They still did not file a claim. They waited several years, two years in fact, to file the current motion. Counsel said that if all they were doing was waiting to get to some kind of a number and they would have immediately filed a claim, well, when the debtors filed an objection, and it became clear they weren't going to reach some kind of an immediate resolution, why not file a claim then. There have been repeated opportunities where New Jersey could have filed a claim. The one case that New Jersey cites in favor of its, quote/unquote, "excusable neglect", is an unpublished case from the Southern District of New York, in Enron. And in the Enron case, the claimant, once it found out about the billing irregularities and that it actually had a claim in that case, filed a claim within less than a month and a half. A month and a half is completely different than the several years that it has taken

New Jersey to have filed this motion for approval to file a late claim. There can be no excusable neglect in this case. I'd be happy to run through the excusable neglect factors, but I'm cognizant of this Court's schedule, and would ask you if you want me to run through the Pioneer factors.

THE COURT: No, what I want to know is these schedules, how the schedules list this claim?

MS. SINANYAN: I'm not sure. The information - I don't have a copy of the schedules. I have it as an environmental claim. The debtors aren't here relying on the schedules. Perhaps it is in our - We can certainly get a copy of the schedules and submit it to the Court, Your Honor, but whether it's the schedules or the EPA memorandum in November of 2002 or the fact that they admit that in the fall of '03 they knew about the claim or the state court action in '05, I don't understand how we get to a motion being filed in 2007, and that constitute excusable neglect.

THE COURT: Okay. Thank you.

MS. SINANYAN: Thank you, Your Honor.

MS. LEHR: Your Honor, if we had filed the proof of claim the minute that we found out in October of - whatever the - the fall of 2003, the debtors would have objected the same way. Once we missed the bar date and once we decided to try to file a late proof of claim, I don't think the debtors - I think the debtors would have objected whether it was one

year late, or two years late, or four years late -

THE COURT: Yes, but -

MR. LEHR: - but we didn't do it because we thought we would litigate this, settle it, or at least have the damages fixed, have the penalty fixed before we came to this Court since we had already missed the bar date.

THE COURT: Well, you know, whether that's true or not, and I don't have any way of knowing, I mean, I'll assume, just for purposes of this discussion that that's the case. Even if the debtors had objected to a claim that's filed six months late and New Jersey's position is we filed it now, six months after the bar date because we just found out that we had a claim. That seems to me to make an argument for excusable neglect because you filed the claim within what New Jersey would contend is a very short time after you found out about the claim, but the problem I have now is, it's four years down the road, and I don't see what takes four years to put together the fact that you have a claim when you've had several opportunities within that time frame, including filing a state court action on the very same subject matter to file that proof of claim. That's the problem. The one thing that I am not sure about on this record, quite frankly, is prejudice to the debtor, and if the debtor is not - the estate is not prejudiced by this late filed claim because the plan hasn't been confirmed and all of

the factors for Pioneer are not met, all of the other factors, I think, weigh very heavily against New Jersey. I just cannot see any way, shape, or form that New Jersey can meet those factors. The only issue I have is prejudice, and I think what I'm going to do is ask the debtors to address that factor. I did not ask the debtors to do it and then give you a chance to respond. I should have taken the debtors up on that opportunity when counsel asked to do that, so I apologize for that interruption, but I am going to have the debtor address that factor and then give you a chance to respond.

MS. LEHR: All right, thank you, Your Honor. Now one reason that we filed the proof of claim when we did is, that on March 5th, 2007, we had a meeting with the debtors to try to reach some agreement and agree on a penalty and be done with it, and we saw we couldn't, that that was not going to happen, so that's when we immediately filed the proof of claim -

THE COURT: All right.

MS. LEHR: - or filed the motion -

THE COURT: Motion.

MS. LEHR: - for the proof of claim, but we really thought before that that it would be settled and solved.

THE COURT: All right, thank you.

MS. LEHR: Thank you, Your Honor.

MR. BERNICK: Your Honor, would it be appropriate to, in the submission that we make to the Court, use that as the vehicle for providing Your Honor the information that you asked for on the schedules -

THE COURT: Sure.

MR. BERNICK: - so that it will be one document that comes to Your Honor that deals with the schedule and prejudice?

THE COURT: Oh, well, okay. I thought it might just be easier to take five minutes and do the argument on prejudice now since I've got counsel here and end that, just get the argument finished.

MR. BERNICK: I don't know if we're going to be able to find out about the -

THE COURT: Schedules, no, you may have to submit that information -

MR. BERNICK: Okay.

THE COURT: - to me in a document and the schedule will be whatever the schedule is. I can probably find it on line myself, so, but -

UNIDENTIFIED SPEAKER: (Microphone not recording.)

THE COURT: Oh, it was a pre-ECMECF, okay, yes, it would be helpful to have you send me the part of the schedule that deals with this claim. Tell me what the prejudice is to the debtor in filing this claim and allowing a motion to file

a late claim.

MR. BERNICK: Maybe in order to expedite this, I'll just address that myself, Your Honor. Obviously, we have had a very extensive process in dealing with the non - in a sense, the non-mainstream claims. This is a significant claim. It started out, as we had heard at least, an $800 million claim. So, there's been an extensive course of conduct, an extensive period of time. No claim was filed, and $30 million, if that's where they're at now, is still not insignificant, and we have to deal with all of these things in the course of developing an overall economic picture to use in connection with our negotiations and the like. If Your Honor allows them now to make this late claim filing then, in a sense, we kind of begin back at the beginning. We don't know if we're going to be able to resolve it or not. It may have to be litigated. This is now very, very late in relationship to all of the other matters that we're handling, and, you know, New Jersey, we've heard, I mean the most amazing admissions about how long they've known about this, and it is the prejudice that we face in trying to develop closure on all of our different externalities, and this is now a late arising externality, and we don't know whether it's going to be resolvable or not, but to change the status quo, I mean there have been discussions about resolving it, they'll continue, but to change the status quo now, it

basically gives them a piece of leverage that they didn't have before because they didn't file in time, actually makes me more pessimistic about whether we'll be able to resolve it. So, I guess our sense is, status quo is status quo. There will be discussions with these folks. We'll see if it can be resolved, but I think it's inappropriate for the Sovereign State of New Jersey to come in and now ask Your Honor for what is essentially leave to enhance their position by giving them something that frankly they don't have right now.

MS. SINANYAN: Your Honor, if I may also add something to what Mr. Bernick said. As you correctly pointed out, this is a four-factor test in that it has been established by Pioneer, and all three of the other factors clearly weigh against New Jersey. We believe that this factor weighs against New Jersey as well. This isn't a one-factor test. If you were to only look at this one factor, completely in a vacuum, then any other claimant who failed to file a timely proof of claim can just show up after the bar date and say, Oh, there's no prejudice to the debtors and just file a proof of claim. It has to be a four-factor totality of the circumstances test, and not only does this factor weigh against them, but clearly the other three factors weigh against them as well.

THE COURT: All right, thank you. Okay.

MS. LEHR: I still must renew my assertion that there's no prejudice to the debtor. There have been no estimation hearings. There's no way that they know what their creditors are going to get. This is no different than anything else, and as far as - I agree that $31 million is not nothing, but it's still -

THE COURT: It's certainly not nothing.

MS. LEHR: It's not nothing, but it is only according to the U.S. Trustee twice a three-month professional fee in this case. So it's like a six-six month professional fee instead of three months. Thank you, Your Honor.

THE COURT: Okay. That was only for one quarter when a lot of plan progress in terms of estimation was going on. It wasn't quite that bad through some of the other quarters.

MS. LEHR: Well, the objections that I received where almost every word was irrelevant or a misstatement, even and and the was a waste of money. Thank you very much, Your Honor, for being so patient.

THE COURT: Thank you. Okay. I do not see a basis for permitting this late proof of claim. I agree that it is a totality of the circumstances test. I think the three factors other than prejudice, are clearly against the State of New Jersey. The state is on inquiry notice as of the time

that the bankruptcy petition is filed. I'm not using that as a factor. I do not know what the schedule says with respect to this bankruptcy petition. I will have the debtor submit that so that I can take a look at it, but at this point, I have no reason to doubt that it is related to an environmental claim. I simply don't know, and if it is indeed related to a remediation, then I do agree with counsel for the State of New Jersey that that would be a totally different perspective than looking at a civil penalty, although, even in an environment remediation claim, under New Jersey statutes may give rise to a civil penalty under some circumstances, and I'm not sure that that ameliorates the inquiry notice that would otherwise arise, but I'm not using that as a factor in this determination simply because I do not have the schedule here to be able to make that assessment one way or the other. I'm just simply noting it for the record because I've made this inquiry on the record. I believe the other three Pioneer factors, however, weigh clearly against the State of New Jersey. This is a very long time between the notices that arose in 2002 and 2003 and the time of the filing of the complaint in 2005 for the state to come forward and make this request to file a late proof of claim, and I've heard nothing that indicates why there was not some action to come forward in the Bankruptcy Court before this other than the fact that the state hoped to come

to some liquidation of the claim through some settlement process. But that is still not a reason not to file a proof of claim even to set out an unliquidated amount and then to conduct the negotiations and to amend it to set out a liquidated claim later. So, I think that that is not a basis for establishing excusable neglect under the Pioneer factors. With respect to prejudice, although there is not a confirmed plan, the debtor has been working to resolve claims. We have had numerous objections, omnibus objections to claims processes. We have been indeed litigating property damage primarily at this stage of the game, objections to claims. Most of the others have been settled. There have been some adversary actions that have gone on to some stages of litigation and some objections to claims that have gone into some portions of litigation but most have been settled. However, this could indeed throw a monkeywrench even into the commercial creditor distributions that are provided even under the current plan, and I'm not making assessments as to whether this plan is or is not confirmable, but the reality is that there is a plan on file, and that has been bargained for by the supporters to the plan. Yes, this may be a claim that will have to be reconciled somewhere. It clearly would not fit into the - Well, no, I shouldn't say that. It may fit into the asbestos claim pool. I don't really know where it would fit, I guess, at this point if it were to be allowed

as a civil penalty claim. I don't know. I haven't looked at this plan carefully enough to know where it would go. In any event, if it were to be allowed in the amount of $31 million, that is a substantial claim no matter what classification it would end up in in a plan, and as a result, I think it would be prejudicial to this estate if it were to be allowed in that amount. Having said that, I am certainly not opposed to parties continuing to bargain to see whether or not this could not be resolved outside the context of this late proof of claim, and I encourage the parties to continue to see whether or not it cannot be resolved in some expeditious fashion. I'll take an order from the debtors that denies this motion for the reasons that I've stated on the record, after you run it by counsel.

MR. BERNICK: We're at the Court's pleasure at this point. I know we've been going for awhile. Would Your Honor want to go through a couple more items? We have the Washcoat sale, and I don't know if that's going to take a long time. Very short, I'm told. Then we have the Burlington -

THE COURT: Is that number 9?

MR. BERNICK: That's number 9.

THE COURT: Let's do number 9 and then we'll take a short recess.

MR. BERNICK: That's fine, thank you.

MS. SINANYAN: Your Honor, I will keep this very

short. The debtors filed a motion to sell their Washcoat business for approximately $22 million. Believe it or not, this is actually the debtors' first sale motion in this case. We've done *de minimis* asset sales before. The sale is in the best interest of the estate. We've cited numerous reasons in our motion why this sale makes sense and the dollar amount for which we're selling it is a good deal. We have had several informal and formal objections, all of which we have resolved by inserting additional language into the sale order, and I have a copy of the sale order redlined against the filed version except for one objection which is the objection of the U.S. Trustee. The U.S. Trustee has objected to the breakup fee that the debtors have asked for, and even the U.S. Trustee's objection was couched as one that perhaps might be mooted if no other buyer showed up to the table, and we've had discussions with the U.S.T. No other buyer has shown an interest to overbid on the assets, but technically, as we explained to the U.S. Trustee, this does not moot the provision for the breakup fee. The asset purchase agreement calls for a very limited circumstance in which the breakup fee can still survive. If a sale of the business happens to some other buyer within a six-month period, again, under very limited circumstances, a breakup fee could be awarded out of the proceeds of this alternative transaction, and again, I'd be happy if Your Honor wants for me to explain what those

very limited circumstances are. So it doesn't necessarily moot out the U.S.T.'s objection, but what I want to concentrate on is the fact that this breakup fee is and always was an essential part of the deal, and that is exactly what the O'Brien test - the Third Circuit test calls for.

THE COURT: Well, no, it calls for showing me how the costs of the breakup fee is related to the amount of the breakup fee, and there's nothing, there's no evidence before me that shows why this particular number is chosen as a breakup fee. That's number one, and number two, I'm not sure I quite understand the alternative sale. If you close on this deal to this buyer -

MS. SINANYAN: I'm sorry, it is not in a scenario where we close to this buyer. It's in a scenario where we failed to close to this buyer because certain closing conditions aren't met, and we end up selling to - and both parties agreed to walk away from the deal, and we close to an alternative buyer within a six-month period, and there's a cap on that. The buyer was in a situation where if Grace wanted to kind of do away with the deal, walk away, we would use all of their time and effort, we would use the fact that they had laid the groundwork and essentially had acted as a stalking horse to turn around and do a deal with someone else. So they negotiated up front that this breakup fee was an essential part of the deal and something that induced them

to bid. The fact that at the end of the day, no other alternate bidder showed up to submit an overbid, does not in any way change the analysis that the breakup fee was essential at the time we negotiated the asset purchase agreement, and we heavily negotiated the 2.5 percent. The typical range that's approved in many bankruptcy sales is two to three percent plus an expense reimbursement fee, and this is capped at 2.5 percent, no expense reimbursement fee. So we believe that the percentage is very much in the range, in fact perhaps on the low end, and no other party, other than the U.S.T. has submitted an objection to the amount of the percentage, and again, the percentage would only come out of an alternative transaction sale once that second sale was consummated within 30 days, is when the breakup fee is approved. So, it really wouldn't be any money out of the debtors' pocket, and it would have allowed us the opportunity to have put the asset forth, market it, and sold it to someone else.

THE COURT: It won't come out of the debtors' pocket because you're going to charge any second purchaser at least as much as you charge this purchaser plus the breakup fee.

MS. SINANYAN: Presumably, Your Honor, yes.

THE COURT: Well -

MS. SINANYAN: There could be a scenario in which if this deal died, the asset would sell for less than the $21.9

million purchase price, but the breakup fee would come out of the proceeds of that sale.

THE COURT: Right. So it will come out of the debtors' pocket.

MS. SINANYAN: But, Your Honor, unless we had the $21.9 million deal that we currently have on the table, we could not get another deal. So to judge a second deal by this standard, this is what the standard is that has been set.

THE COURT: That was what the issue was in O'Brien and as I recall the U.S. Trustee was the only party that objected there too.

MS. SINANYAN: Well, there's several points where I would distinguish this case from O'Brien. First, Calpine Corporation, which was the stalking horse bidder and lost out to NRG, interestingly both of whom are Kirkland & Ellis' clients, Calpine Corporation went to a bid procedures hearing, was denied the breakup fee, and decided to move forward with the auction anyway. This is not the scenario in which we face ourselves. The buyer has never been denied the breakup fee. Unfortunately, because the parties both require an expeditious sale, we didn't have the opportunity to put this in a two-step process in front of this Court because as you normally know, you would have a bid procedures hearing, get approval of the breakup fee, and then walk into a sale

hearing knowing that you have that breakup fee in hand. So, I would certainly distinguish this case on those grounds, and the Court in the Third Circuit heavily relied on the fact that Calpine was denied that yet decided cautiously to go forward and that they went forward for some other reason, and then the Court goes into what those potential other reasons would be. The other note that I would like to make in the O'Brien case is that the U.S.T. in that case suggested that perhaps the buyer, Calpine, could seek a breakup fee at the end of the process if the situation ever arose that it needed the breakup fee when they were denied that breakup fee. That's the same suggestion that the U.S.T. made in this case, and the Third Circuit found that that wasn't a viable suggestion, and in fact said that that is - used it in denying the breakup fee to Calpine and that's not something we wanted to go forward with here. I basically come back to the fact that it's a 503(b) test of whether the breakup fee was a necessary element to get the deal done, and when you have a buyer that says, I'm not willing to even submit $21.9 million and subject this to a sale process unless you ask for the breakup fee and we get this breakup fee. I don't know that the debtor has really any other choice to get this acquisition done, and as we've said in our papers, we've been marketing this business for several months, almost a year, and the business, because it's out for sale, has had certain

- It's had some instability and some economic ramifications to the business and one of the main points that Grace wants to do is to get the sale done and to get it done expeditiously and the same from the buyers, and everyone wants to get this deal wrapped up and wrapped up now.

MR. ENGMAN: Your Honor, Richard Engman from Jones Day on behalf of the buyer here. If Your Honor will allow, I am a New York admitted attorney. I don't have local counsel here today, and I haven't been admitted *pro hac*, but -

THE COURT: All right, that's fine.

MR. ENGMAN: Thank you, Your Honor. I just wanted to rise in essence to second what counsel was saying. I think that the reality here is that both parties did the right thing and acted in good faith. From the buyer's perspective, they were being asked to pursue a sale on a very tight and short time frame, undergo much time and expense in order to get there in time, and from the debtors' standpoint, they did not want to give up the, almost in a fiduciary way, ability to continue to talk to other parties and continue to look for a better deal for the estate. From my client's perspective, they were willing to move forward, notwithstanding the type of time frame if they were given assurance that the debtors would seek approval of their breakup fee should there be an alternative transaction. I think the fact that there hasn't - that we're here today and

there isn't an alternative transaction before you, but we're seeking approval of the asset purchase agreement, I would - a couple of points on that. One, that is the complete agreement, and in a provision in that agreement is this breakup fee. It's at this stage almost a technical matter. The parties, I can represent, intend on closing by the end of the month. The only way that the breakup fee becomes even relevant is if there is a failure to close for some reason. If there's a failure to close on account of a buyer breach, there is no breakup fee. If there's a failure to close on account of a debtor breach, candidly the breakup fee is probably the smallest issue since they would - if Your Honor approves the APA they would be bound by it, and we'd get super damages and specific performance and the like. And only under very - so we're really talking about only if a closing condition doesn't occur that's in neither party's control, and candidly, Your Honor, I'm not aware of any at this stage. I think we're in theory talking only in theory, but I especially in this case, I actually think that theory is important in that our client - counsel brought up the norm, that with Your Honor, that the norm is there's a bidding procedures hearing, there's a bidding process after that, and that gives both my client comfort that it doesn't have to engage in those costs and expenses until it knows that its breakup fee is going to be approved. It also gives

the rest of the process the normal bidding procedures, we've seen it. I think in situations like this where time was of the essence, we were - the buyer was happy to go through the normal process, but there wasn't enough time. I think we tried to do the right thing, recognizing that there would be risks, that our worst - today was not our worst case scenario. Our worst case scenario was if in fact the debtors did find an alternative buyer, we would be here before Your Honor having invested the time and resources but the debtor already has a better deal, and we don't have an approved breakup fee, and we're just relying on everybody's good faith in asking Your Honor to approve that. We believe that good faith would have been important, not just to this deal, but to the bankruptcy process and the sale process in situations like this that when parties with open eyes, recognizing that there's always risk until it's approved, but unless there is real prejudice or a reason other than it had not yet been approved, that it will be approved when the parties do the right thing. I think that's best for the process.

THE COURT: All right, thank you. Mr. Klauder?

MR. ENGMAN: Thank you.

MR. KLAUDER: David Klauder for the United States Trustee. Your Honor, I'll be brief on this. We've kind of been engaging here in somewhat of an academic discussion because you're dealing with a potential future deal that it

seems all the parties believe is very unlikely to happen, and the only point we made in discussing this with the debtors and the buyer before and we'll make today is, when analyzing this, which you have to analyze under O'Brien and as an administrative expense whether it's an appropriate administrative expense, why don't we do it if this potential happens, meaning if there's an alternative transaction that's brought forth and the buyer feels that they're entitled to a breakup fee they can come back in front of this Court at that time when we know the whole scenario, and they can submit their request at that point, and that's what we're arguing here. We think that's consistent with O'Brien. I do agree with counsel for the debtor in a sense that this is different than what happened in O'Brien but for different reasons. Here we're not dealing with bidding procedures. We're not dealing with stalking horse purchasers. We're not dealing with an auction. This was a private sale, and that kind of was the impetus behind our original objection for the breakup fee at all. If you look at O'Brien and O'Brien goes through some analysis of other case law and other standards out there with regard to breakup fees, it always deals with stalking horse, it always deals with bidding procedures, it always deals with auction procedures. So, the Third Circuit analyzed the breakup fees in that scenario which isn't happening here, so I don't believe they've met the O'Brien

standard, and Your Honor had a point that being that they have to justify the actual fee and which they haven't done here either, but we threw out the alternative that it be kept open, taken out of the, I guess the APA for today, kept open and come back if this particular alternative transaction happens, which just seems like it's not, but if it does happen and we address this at a later time. Thank you.

THE COURT: Since everyone seems to think this isn't likely to happen, what about this to try to satisfy the U.S. Trustee's objection, what about amending the order to say that a breakup fee not to exceed the two and a half percent will be allowed, but the exact amount will be determined on appropriate motion filed with the Court after this alternative bid procedure or bid is confirmed. So that I will award in advance the fact that there will be a breakup fee, but the amount will have to be subject to some showing that in fact it's related to whatever the actual out-of-pocket costs and expenses were.

MR. ENGMAN: I think if it's related to our out-of-pocket costs and expenses, I don't believe that I have a problem with that. The concern that I had in the U.S. Trustee's formulation of necessity is that the necessity was in order to have a deal now.

THE COURT: Well, I am convinced from the recitation of facts on the record that the breakup fee is necessary to

get this deal done now, and because your client has served as the stalking horse in the event that this transaction does not close and the debtor finds another purchaser and closes within 6 months, which are the conditions under this asset purchase agreement, then I find your client would be entitled to a breakup fee, but the amount of that fee not to exceed 2.5 percent would be determined upon appropriate motion filed with the Court at a later date.

MR. ENGMAN: Thank you, Your Honor.

THE COURT: Mr. Klauder, would that satisfy the U.S. Trustee?

MR. KLAUDER: I don't know. Yeah, that's fine. I think it satisfies it but I understand what Your Honor is saying.

THE COURT: Okay. All right, if you will amend the order, the sale order - if you want to even handwrite one out if you need an order today. I'm going to take just a ten-minute recess. If you want to do it over the recess, I'll sign it now. If you want to submit it on a certification of counsel, I'll take it. You can let me know at the end of the recess. All right, we'll be in recess for ten minutes. Okay, thank you.

(Whereupon at 4:19 p.m., a recess was taken in the hearing in this matter.)

(Whereupon at 4:36 p.m., the hearing in this matter

reconvened and the following proceedings were had:)

THE COURT: Do you have an order?

MS. SINANYAN: Yes.

THE COURT: All right.

MS. SINANYAN: Your Honor, Mr. Klauder is reading it right now.

THE COURT: Okay.

MS. SINANYAN: In the meantime, I did get a copy of the schedules that listed the New Jersey Department of Environmental Protection, there's a couple of pages of it, and it lists them as having an environmental claim. If you want, I can hand it up to the Court.

THE COURT: Sure, thank you. Thank you very much.

MS. SINANYAN: And, Your Honor, we also have the sale order. We interlineated some language. I'd like to hand that up to the Court as well.

THE COURT: All right.

MS. SINANYAN: I don't know if you need a redline. It does not contain this interlineation or we could file one separately if you wanted or -

THE COURT: A redline of -

MS. SINANYAN: The sale order from the order that we filed comparing it from the order that we filed originally with the asset purchase agreement.

THE COURT: Yes.

MS. SINANYAN: Okay.

THE COURT: Okay, all right. That's fine, thank you. Okay, does anyone else wish to be heard on the matter of the sale? Does the new order that I've been handed up resolve everyone else's objections? Okay, no one else wishes to be heard. I will sign this order that contains the change made with respect to what I ordered on the record concerning the stalking horse fee -

MS. SINANYAN: Thank you, Your Honor.

THE COURT: - that order is signed.

MS. SINANYAN: Thank you, Your Honor.

THE COURT: Mr. Bernick?

MR. BERNICK: The next item, actually, is two items that are related which are items 10 and 11 on the agenda, and they relate to the terms of the stay. I rise only because I know that others have motions or requests that are being made of the Court, and I tried on the break to see if we couldn't come to a more precise understanding of exactly where everybody stood so that maybe we could expedite this. I don't know if it yielded any fruit. I know that others are going to want to probably speak on their own. From the debtors' perspective, we were content with an order that would stay the claims against the State of Montana and the claims against BNSF insofar as they rose out the exposures to asbestos in and around Libby. Your Honor then entered an

order that was somewhat broader and in looking at it, I tried to ask myself, Well what was Your Honor getting at? And I went back to the transcript and you actually had expressed a little bit of frustration, maybe a little bit more frustration than that with the fact that, well, how many times do we have to keep on going through this. Isn't there a way just to have language that solves all the problems. From the debtors' point of view, we're also content with Your Honor broader language but given how broad it is, we think it is important to have a qualifier there that basically says to the extent that the claims arise out of exposure to asbestos in or around Libby. On the break I asked Mr. Cohn whether there was a problem with that, and he indicated that he has a sensitivity, I know he can speak for himself, a sensitivity to what impact that might have on the Workman's Comp cases, and from my client's point of view, we understand the Workman's Comp cases are proceeding. We have no desire to get in the way of that. So, to the extent that we can make that representation, we're not seeking to have that order apply to Workman's Comp cases. I'm not sure who else is out there, but from the debtors' point of view, so long as the effect of the stay or the terms of the stay cover the State of Montana, BNSF, and any other causes of action that arise out of exposure to asbestos in or around Libby, we're fine with that. We're also fine with not having that extra

language, but we'd kind of like to know if there's somebody else out there that people already know about so that we can include them. We just don't want to go through the process again needlessly. So, the debtor has flexibility on this. I think that the issue really is what are the terms that the order should read out, and we will defer to whatever it is that Your Honor chooses to do with this ultimately.

THE COURT: All right, Mr. Lockwood.

MR. LOCKWOOD: Well, Your Honor, Mr. Bernick has put his finger on it to some extent in saying, you know, he'd like to know what else is out there. I mean, the problem with this order is that it enjoins whatever else is out there without any factual record of either what it is that's being enjoined or for that matter, any notice to the persons who are being enjoined. The debtors' papers are interestingly schizophrenic on this whole issue because on the one hand, for example, in paragraph (12) of their response brief, they say, Instead the debtors and estate sought to enjoin actions essentially filed - I'm not sure what essentially means when it modifies filed, but anyway, essentially filed with respect to exposure to the debtors' asbestos-related materials in and around the Libby, Montana area. Later on, however, in the very same thing, they talk about with respect to the Libby things, wanting to enjoin actions against third parties that the Libby claimants have sought to proceed against including

the debtors' insurers, Montana vermiculite, both of whom were the subject of previous orders, the State of Montana, and BNSF who have asserted contractual or common law indemnity claims. Everybody, I think, with all respect to the Court, agrees that the modified order that you entered with the language in it which has no reference to any defendant, any and all causes of action, is hard to know exactly who it's going to cover and why, and Mr. Bernick just said that he wouldn't object to some modification of that. The State of Montana explicitly stated that they had no objection to the Committee's proposed order which would have limited the stay order to those requests for injunctive relief which were the only ones pending before the Court as to which reconsideration was being sought, namely the State of Montana and BNSF. BNSF has joined the Libby claimants' motion to alter or amend so I take it we an assume that at a minimum BNSF would be happier with a less inclusive order. The problem with the debtors' proposal, frankly, is that while it limits to some extent the breadth of the original order that Your Honor entered, it still says after staying the actions against the State of Montana, BNSF, it then goes on to say, "And all actions arising out of alleged exposure to asbestos in or around the Libby mine and Montana, Libby, Montana area, indirectly or directly caused by the debtors." When it says, "and all actions" it doesn't say against whom. So that

theoretically, we've started with the situation where the Court has had relief requested by motion on notice to protect two companies.

THE COURT: Yeah, Mr. Lockwood, let me just stop it. Yes, I think the order was overly broad, and yes, I am frustrated by the continual actions that contend that that seemed to be end runs around the automatic stay that are efforts to get to the same transactions without getting the debtor involved in the case because the debtor can't be involved in the case, and yes, I am getting - I think annoyed is probably the right word to use because from a legal perspective, and that's how I mean this, and I think it's inappropriate to continue to look for new defendants when you can't get to the primary defendant that you're trying to sue and get behind the scenes essentially by claiming against a new defendant when you can't get the primary defendant in the action, and it involves the same types of witnesses and activities that that primary defendant is going to have to be involved in at some stage in that litigation. And, yes, I think that is the purpose why I was attempting to get this order to say more than it probably should have said. So, I agree with everyone that it was too broad, and it should be limited to the particular defendants involved in the actions before me, and I will accept that modification. I will accept it with a warning. I hope not to see any more of

these types of actions because if they continue to be brought, then I am going to issue a very broad injunction, and I don't know what kind of notice I'll require to be given, if I have to notify every company, every entity, every household, every post office box, every vacant lot, and everything else that's in the Libby, Montana area that they're subject to an injunction, maybe that's what we'll have to do.

MR. LOCKWOOD: Well, Your Honor, two points. First, I think Mr. Cohn should probably respond to that before we -

THE COURT: I don't need a response. I do not need a response.

MR. LOCKWOOD: And secondly, I would just mention that Your Honor did after all rule, and we believe correctly, and we continue to contend correctly that you lack jurisdiction to issue the order with respect to the State of Montana, and I hope Your Honor is not ruling on that issue today.

THE COURT: I'm not changing my mind with respect to what I do and don't have jurisdiction over.

MR. LOCKWOOD: Thank you, Your Honor.

THE COURT: But I believe I need an order that will amend my prior order to put it into the appropriate scope. So -

MR. BERNICK: I think we can undertake and do that

and just to be clear so that everybody knows what will be circulating. It will be an order that is specific to the State of Montana, and to BNSF, and I think it will probably look a lot like the order that the ACC has tendered, but we'll take another look at it and -

MR. LOCKWOOD: And now I would turn the podium over to Mr. Cohn, if he has any additional remarks, Your Honor.

THE COURT: Mr. Cohn?

MR. COHN: I'm not going to respond to the remarks of the Court. When I'm invited not to, I don't think I'm smart enough to rise to the occasion or sink to the occasion as the case may be. I am, however, here to revisit the question of, and when I say "revisit", this is the first time I've had a chance to address this, the question of whether there should be a temporary stay at all of the BNSF actions and of the State of Montana actions. I understand that that's all that's now before us because there will be as stated no broader than that, but as to these you might recall that the procedural sequence was that this was not asked for by anyone at the time that the broader motions were argued. That I had at the conclusion of those arguments, I asked to be excused on the basis that matters that affected the Libby claimants appeared to be done for the day, was excused, and then later on that night it turned out that there was a colloquy among counsel when I wasn't present which led to the

circulation of these temporary stay orders and ultimately the entry of a temporary stay order. So, under those circumstances, I respectfully submit that I should be heard with an open mind on the whole question of whether there should be a temporary stay at all.

THE COURT: All right.

MR. BERNICK: Your Honor, just so that the record is clear. There was a discussion about the stay on the record. This was not something that took place after the court was closed down and all the rest. Your Honor indicated that you would be issuing a stay, and I'm not sure - I have no problem - Your Honor, obviously, is going to hear from Mr. Cohen, but I'm not sure what the real posture of this is. If it's a motion for reconsideration, if it's a motion for some kind of an amendment. Your Honor indicated that this is after all preliminary temporary status quo related. That's all that it is. It just preserve the status quo until the next time around. Now, I don't know if Mr. Cohn chose to leave, that was fine, but this is something that came up in the ordinary course of the Court's business. So, Mr. Cohn, I know is going to be heard out here, but it is the debtors' view that it is late to be arguing somehow there's something wrong with there being any kind of stay at all, a position that nobody else is arguing here.

MR. COHN: I should be flattered that Mr. Bernick

feels the need for a preemptive strike of this type, but let me continue with what I was going to say, Your Honor. Point number one, when any stay is entered, then one of the criteria that needs to be satisfied is a weighing of the harms and in this case, Your Honor, the imposition of these stays results in terrible harm to the people of Libby who continue to die and go through the end stages of life with no access to 24-hour care. You talk about irreparable harm, that is the very definition of irreparable harm. There's nothing that will ever be able to be done for these people in the last year of their life to provide them with the care that they need if this stay is entered now such that they can't pursue the defendants to whom they do have access because they're not protected by the automatic stay. The second point, Your Honor -

THE COURT: I'm sorry. I understood the words, but I don't understand why.

MR. COHN: Well, because, Your Honor, we acknowledge we were crossed down by the automatic stay. We have no - we can get no relief from Grace for the foreseeable future, until the whole -

THE COURT: Right.

MR. COHN: - Chapter 11 process plays itself out. There are, however, these other defendants, BNSF, for example, there have been settlements reached and there are

settlement discussions of BNSF cases. So to the extent that those case aren't stayed, there will be settlements and some people will, those people whose cases are settled will get, if they're still alive, they'll still get that financial ability to get 24-hour care that they need in the last months of their lives. So that - and same if we're, you know, we're allowed to pursue the state, there's a possibility that there would be settlement of that litigation on such terms as we provide these people, while they're still alive and while they still need this care, with the opportunity to obtain this type of care. That's what this is all about for the Libby claimants at this particular moment. That's the urgency of it from their perspective.

MR. BERNICK: Your Honor, at this point I do object. That is an argument that goes to whether the Court should decide in their favor the ultimate merits of a matter that's been taken under submission by the Court. The only issue that brings us here today is a temporary stay, a temporary stay to preserve the status quo pending Your Honor's decision with regard to the merits of whether this litigation against BNSF should go forward at all.

MR. COHN: I actually agree. I actually agree with Mr. Bernick's -

MR. BERNICK: Excuse me, so the only issue that - if any issue is to be addressed is why the Court doesn't have

the power or should not issue a stay to preserve the status quo until you rule on the merits. And the argument that's been made is - doesn't really address that. The argument that's been made is yet another argument with respect to the ongoing issue of whether this kind of litigation should go forward at all.

MR. COHN: First of all, Mr. Bernick is right that the sole issue that is now before the Court is the issuance of a temporary stay. The point that I'm making is that the law is clear that under - whenever any stay is issued, the balancing of the harms and the existence of irreparable harm are before the Court, and that's true of a temporary stay and it's true of a long-term stay, so, it's true of any stay. That's one of the criteria, and in this case, as it effects the Libby claimants, that's a very drastic criteria on a very human level. These people are suffering. They need relief. Their only hope for relief is to get settlements from non-Grace defendants and a temporary stay in fact is going to preclude that from happening. And if it last for quote/unquote "only a few months" there are people who are, you know, for whom those few months are going to result in agony and a kind of indignity and pain, unnecessary suffering, that we hope could be prevented if there were no stay. So that's the point that I'm making, Your Honor, applicable to any stay of any duration. The second point,

Your Honor, has to do with probability of success because of course that's another criteria you would need to consider before the issuance of any stay, and in this case where you've already ruled that you do not have jurisdiction in the context of the State of Montana litigation, the burden, of course, is on the state to come before you and seek reconsideration, which they've done, but given that they have the burden, given that you already ruled that you don't have jurisdiction, it strikes me that it would be very difficult to find it possible for the state to satisfy, to make any showing that it has a probability of success on the merits, and as I say, that applies to any stay no matter how temporary.

THE COURT: But that is not the same with BNSF though. I have not ruled that I don't have jurisdiction with respect to BNSF.

MR. COHN: That is true, Your Honor, that is true, and as to BNSF I would add, but I'm just really going to say this because Mr. Bernick is right, that it would not be fair for me to stand here and argue again on the overall merits, but I do believe that it's clear from the papers that they're basically similar situations and that to the extent that you don't have jurisdiction to enjoin the state, you almost certainly have jurisdiction to enjoin actions against BNSF, but I'll say no more on that because that would be rearguing

the merits of the argument that you already heard at great length the other day.

THE COURT: All right.

MR. COHN: One more point, Your Honor, about temporary stays. There is no such thing under the law as a temporary stay which is not either a TRO or a preliminary injunction. We have Rule 65. Rule 65 has time limits. The Supreme Court of the United States has said in the Sampson case which we cited in our papers that any stay that lasts beyond the 10 or 20-day period, provided by Rule 65, is by definition a preliminary injunction no matter how it is labeled. So to the extent that this Court in order to, for whatever reason, whether, you know, it's quote/unquote "on the merits" or whether, you know, it's quote/unquote "to have more time to decide" while the matter's under advisement, but for whatever reason a stay is entered, if it exceeds the 10 or the 20-day period, it is a preliminary injunction and must meet the standards for a preliminary injunction, and there has been no demonstration that that standard has been met. When we were here to argue on the merits, Your Honor, one of the things that became clear in our procedural discussion is that Grace has not introduced any of the evidentiary foundation that it would need to obtain a preliminary injunction, and your thought on that subject was, Well, why don't I first look at the legal issues, and we'll get to the

evidence only if we need to get to the evidence later on. So right now we're in a position where there has been no evidentiary showing whatsoever, and so there's no basis for a preliminary injunction and hence, we respectfully submit no basis for a stay that lasts longer than the 10 or 20-day period permitted by Rule 65, and so we opposed a temporary stay greater than the 10- or 20-day duration on that basis as well. Thank you.

THE COURT: All right.

MS. AARONSON: Your Honor, Anne Aaronson on behalf of BNSF Railway. I concur in the statements of the State of Montana's counsel. BNSF also believes that there's no basis for a preliminary injunction in this case. I understand that you have a temporary stay in place just until you decide the merits, but the status quo of the cases involving BNSF was not a stay before Your Honor, the temporary stay, and -

THE COURT: Was not what? I'm sorry.

MS. AARONSON: Those cases were not stayed. Those cases were proceeding at the time, and so, BNSF wouldn't oppose a short temporary stay, but in the long run, as well as the plaintiffs, BNSF will be harmed by the delay in the litigation, and these are independent claims against BNSF. The debtors are not a defendant in any of these cases except four that were filed pre-petition. The rest are all post-petition claims, do not involve the debtor, and they're

independent claims, and we don't believe there's a basis for a preliminary injunction here, and that's all that I have to say on that.

THE COURT: All right.

MR. MANGON: Good afternoon, Your Honor. Kevin Mangon on behalf of the State of Montana. I rise to indicate our - as the Committee had indicated, the state does not oppose their relief. Specifically, we're asking that the Court continue the temporary stay as to maintain the status quo relating to causes of action against the State of Montana pending resolution of the various injunction motions as well as the motions for reconsideration, which you heard considerable argument on May 21st, and it was at that hearing that the Court ruled that the temporary status quo would stay in place until the Court had an opportunity to address the motions for reconsideration. Your Honor, we would again request that this temporary status quo stay in place pending your decision.

THE COURT: Okay. Is the briefing and everything now - the arguments are all done, is everything finished on the motions for reconsideration?

MR. BERNICK: Yes, I believe that that's correct. I think that they were actually completed -

THE COURT: At the argument.

MR. BERNICK: I think what Your Honor suggested was

that we have the stay that you - I think it was, withdraw the prior order but that you were going to issue an opinion on the matter. That is, that you wanted, and I think that we can get the transcript, but that you wanted to address the order that was the subject of reconsideration, you wanted to address that in an opinion.

THE COURT: Well, I thought what was going to happen was that Mr. Monaco's client was withdrawing a motion. I don't know if that's happened, and that I was, once that happened, going to reconsider the other order, but I think I've lost track of -

MR. MANGON: Your Honor, procedurally, we had filed two motions, the State of Montana. A motion for reconsideration of the Court's April 16th order denying the extension of the preliminary injunction to the State of Montana, as well as your April 16th order denying the motion for relief from the automatic stay that the State of Montana had. It was at that hearing that it was agreed that the State of Montana would withdraw its motion for relief without prejudice.

THE COURT: Right.

MR. MANGON: And that has been done -

THE COURT: Okay.

MR. MANGON: - pursuant to the order, and that's where we stand now, Your Honor. It has been withdrawn and

the Court vacated its opinion and order with regard to the motion for relief.

THE COURT: Okay.

MR. BERNICK: But then you said, "I'll deal with the opinion on my own and the adversary". I think that's your prior opinion, "but I think that the stay order will provide a temporary stay just to be sure that nothing happens that anyone's prejudiced in Montana while I've got these other issues under advisement".

THE COURT: Okay.

MR. BERNICK: I have only one thing to add in response to Mr. Cohn's comments which is, I don't think that's actually - he's recited actually in accurate fashion what the law is. The Court has very broad powers, as I know that Your Honor is very familiar under § 105, and the real litmus test for relief under 105 is impact on the reorganization, and it's not necessarily the traditional balancing, although, obviously as a court of equity Your Honor could always consider all those different factors. But 105 is a little bit different from ordinary TRO and preliminary injunction proceedings in that it provides more flexibility to the Court, but I think we have nothing further to add on the subject.

THE COURT: Okay. Mr. Cohn, I think it's still appropriate to keep in place the preliminary injunction. I

will attempt to get an opinion out very promptly. I'm calling this a temporary stay. I really have not been looking at this either as a temporary restraining order or as a preliminary injunction. I've really been looking at this as simply a stay of litigation not under Rule 65 standards but more under 105 standards for that reason until I have an opportunity to take a look at the opinion and the reconsideration motions that have been filed, and I think it is still appropriate to keep that stay in place. Having said that, to the extent that BNSF wants to continue to negotiate with the plaintiffs, with the Libby claimants, to attempt to get some form of settlement done, I certainly have no intention of standing in the way of your efforts to try to settle cases. So, to the extent that you've got plaintiffs who are in extremis and BNSF wants to attempt to negotiate some resolution, I don't think this stay order is intended - let me state that positively. The stay order is not intended to prohibit you from entering into settlement agreements. It is intended to stop the discovery issues and the litigation from going forward in the state court, but if you and BNSF want to go forward with settling cases so that you can, you know, provide some comfort to those people who may unfortunately be dying, this Court's not going to stand in the way of doing that.

MR. COHN: And we can add some language to the order

that makes it clear that, for example, if we need to do a dismissal or, you know, get Court approval out there in the context of settlement agreements, that we're able to do that notwithstanding the temporary stay?

THE COURT: With BNSF?

MR. COHN: Yes.

MR. BERNICK: Well, sure. BNSF wants to spend its own money to resolve its own liability. Far be it from us to get in the way if you would be happy with that, but I think that the reason we're here and if the debtor does have a concern, it's not simply gratuitous, it is that there's the potential for a claim over by BNSF against Grace, and again, if they want to pay out of their own pocket and forgo any possible claim against us, that's fine, but to the extent that the Court approval in Montana then has some effect under Montana law of either creating a foundation for or otherwise implicating the ability to make a claim over against Grace, we would have no choice but to then participate in that proceeding. They then would have no choice but to ask Your Honor's permission to lift the stay for purposes of having that determination go forward.

THE COURT: Well, I mean, to the extent that BNSF thinks it has a claim, it's going to file a claim, and to the extent that the debtor disputes it, the debtor is going to dispute it.

MR. BERNICK: It's just like - It's just a little bit like, although I hate to say it, the insurance companies are always very concerned about proceedings that take place here that may have some collateral affect against them elsewhere, and by and large, they have been successful and perhaps with good reason in getting protection against that eventuality through obtaining relief by this Court. It's the same kind of thing. We don't - If they want to go to get relief from a Montana court in some fashion, that's fine, but we want it to be completely neutral, no affect on us whatsoever. So what we're really saying is, we would object to putting it in the order at this point in time, I think that it would take a little bit more work to think about how that actually works out, and if they want to then make representations that they're not going to come after us for the money, we're not going to have any issue, but if they fail to make those representations, then we're kind of back at the beginning.

THE COURT: Well, BNSF has said that, you know, it doesn't mind a temporary stay, but its position has been that these are direct claims against BNSF and as to which the debtor isn't involved, if it's a direct claim, that's what counsel just said on the record.

MR. BERNICK: Well, it's very careful and I don't mean to suggest that there's kind of a parsing of words here.

They're saying that there is a direct liability claim against them. That's what they're saying, but they're not saying that they will not seek on the basis of the outcome of that claim relief against Grace.

THE COURT: Well, but they're permitted to settle their direct liability claim whether or not they decide at some point to seek against Grace.

MR. BERNICK: They can go settle if the want -

THE COURT: Yes.

MR. BERNICK: - but they can't go to a Montana court and get some kind of determination that may have some effect with regard to them perfecting a right against Grace.

MR. LOCKWOOD: Your Honor, Your Honor -

MR. BERNICK: Excuse me -

MR. LOCKWOOD: - non-debtor defendants in across - Mr. Bernick, you interrupt people constantly.

THE COURT: Just a minute, gentlemen.

MR. LOCKWOOD: Your Honor -

THE COURT: Look, it's getting late, and if you want to stop we'll adjourn for the day.

MR. LOCKWOOD: No, no, no, I just -

THE COURT: Otherwise don't interrupt, Mr. Lockwood.

MR. LOCKWOOD: Will you apply that rule to Mr. Bernick?

THE COURT: I will apply that rule to Mr. Bernick.

MR. LOCKWOOD: Thank you, Your Honor.

THE COURT: Mr. Bernick, go ahead.

MR. BERNICK: Yeah, I was just saying that to the extent that the proceeding in the Montana court then has some implications with respect to a Grace exposure to a claim at some point in time, we would then, presumably, have some need to show up in Montana and deal with that, and I don't know the answer to these questions right now, but I would object in taking this up as kind of an ancillary issue that is after all associated with a much narrower question and that is whether there should be an interim stay. Your Honor has said that. Your Honor, we talked about the prongs of that stay, let's leave that alone. If they want to come back or come to us and say they want to be free to make application to a Montana court for some purpose, maybe we'll be satisfied that there's no need to seek any relief from Your Honor, but I don't think we should have this issue addressed and somehow resolved without any real process at all at this point in time. I don't know enough about what their position is going to be. I don't know enough about what the Montana courts would do and what effect that would have on the debtors' rights.

MR. LOCKWOOD: Your Honor, Mr. Bernick and his client are in the same state of ignorance in fifty state courts around this nation where co-defendants who could

potentially bring contribution claim against Grace are settling cases by the dozens if not the hundreds and the thousands. Your Honor has taken a humanitarian approach here to say that, you know, you're not going to interpret an injunction against litigation with quote - remember the rationales that Mr. Bernick has asserted for this. Automatic indemnity, identity of interest, record taint - all of those things happen in litigated actions and decisions by courts. They don't happen in settlements. Now he's speculating that if somebody got an approval of a settlement in a Montana court, all of a sudden something that court would start making findings of fact about the merits of whether there's a contribution claim against Grace? That just doesn't happen.

THE COURT: Well, I think I can make it clear that no findings against Grace are being unstayed. Is that the right word. The stay is not being lifted with respect to any findings with respect to Grace. What I will permit, however, to the extent that BNSF and a particular plaintiff are able to settle a claim and it requires some action to dismiss or otherwise terminate an action in a Montana state court, then the stay will not apply - this temporary stay will not apply to taking that action in the Montana state court so that you can terminate the litigation based on your settlements. I don't see why it would take an order of a state court to approve the settlement. It should only take an order of the

state court to dismiss or terminate the action. So I'm not lifting the stay for the state court to approve the settlement. You folks can enter into whatever the settlement is that you need to enter into, but then take the action to terminate the litigation in the state court. Is that clear enough? That should take care of what you need.

MS. AARONSON: Yeah, I think that what Mr. Bernick was asking for is for essentially BNSF to waive an indemnity claim against, you know, as a result of us settling cases, which is something that -

MR. BERNICK: We're not asking for any waiver at all. We're just asking for - Well, Your Honor, I think -

MS. AARONSON: Well, I mean, you were saying that if an order was entered in the Montana court then essentially we'd be paying out of our own money and not have a claim to get back against Grace, which that has to do with the contracts between BNSF and Grace. It has nothing to do with the -

THE COURT: All right. I think we've got it straightened out. I think the order at this point is clear. Somebody get it from the transcripts so that we know what it's going to say.

MS. AARONSON: Thank you, Your Honor.

MR. BERNICK: It's dismissal versus approval.

THE COURT: Well, some termination. Dismissal or

whatever the appropriate termination of the litigation action is. Okay, so on items 10 and 11, I will get an order from the debtor after the debtor runs it through all counsel including counsel to BNSF and counsel to the Libby plaintiffs that will keep the stay in place on a temporary basis, but with this caveat concerning settlements between BNSF and the Libby plaintiffs and the need to terminate litigation as a result of a settlement if it's achieved, and hopefully that will solve the immediate problem.

MR. BERNICK: Thank you, Your Honor. I think we're going to at this point turn to item 19 which relates to the law for discovery, and I guess I would suggest that the way to proceed here, we did - I don't want to revisit all the history here, but Your Honor will recall that the last time we were before the Court with respect to what to do to follow up on some of the problems that the debtor had identified in the information that had been provided from the law firms, and we came in to ask for or I believe we noticed up depositions. There was a motion for a protective order and the alternative proposal that was made at that time by the law firms was to go with interrogatories and no depositions. So in a sense there were two positions that were established. One said interrogatories, general interrogatories, the other said depositions.

THE COURT: But what agenda item number are we on?

MR. BERNICK: This is 19, I'm sorry.

THE COURT: I'm sorry.

MR. BERNICK: I really apologize this is item 19. I think that there is - I'm not sure if there's any other item.

THE COURT: Okay.

MR. BERNICK: And at that time, Your Honor kind of chose a middle course, and the middle course was to kind of phase it. So the idea was that there would be first of all interrogatories and then the motions for protection on the depositions would be held in suspense, and we'd see where we were. There was an effort to actually craft the interrogatories at the conference in the conference room in Pittsburgh. We came back in. There was further colloquy and the long and short of it was that during the course of the rest of the ensuing days, there was discussion of how to proceed in order to get a better set of interrogatories and ultimately an agreement was reached pursuant to which the four law firms that were at issue, that is Motley, Rice, Kelly & Farraro, Baron & Budd, and DiAngelo's firm agreed to answer the interrogatories that we had drafted and to then take the matter up with the Court at this time. So, essentially we got, this was the third set of interrogatories. Answers to those interrogatories were provided on the 13th as the debtor promised a report was then made to the Court and to the other side, the following week,

which was last week, basically taking up the question of whether the information that had been provided pursuant to those interrogatories was sufficient to obviate the need for depositions. So, that report was turned out and this matter was then set on the agenda for today to take up the question - with the carryover question about wether the depositions should proceed in light of the interrogatory answers that had been provided to the third set of interrogatories. So, that's the posture, I'm not going to go further back in the history. My intention this afternoon, Your Honor, was two-fold. One was to talk about the need for depositions which we believe is still there with respect to the law firms that have now answered the third set of interrogatories. And the second is to ask now that that process has been completed with respect to these firms, and actually it has taken place relatively quickly, all the deadlines have been met, we want the same set of interrogatories to be answered by the other firms. Your Honor will recall that the last time that we took the matter up, we had made the decision to focus on the four firms in order to get a live issue before Your Honor. Your Honor then indicated, and I think we can talk about the transcript if need be. Your Honor indicated that whatever was going to happen with the four firms would then - that the Court hoped that it would be able to provide a template so that there would be consistency in dealing with the other

firms. So, two areas: One is what to do with the four firms. The other is what to do with the balance of the firms. I'll also note for the record that Ms. Ramsey, as I understand is down in the friendly confines of Costa Rica and pursuant to the agreement that we reached last time, none of what we talk about today is designed to address either Early, Ludwick or Brighton Purcell. We, in respect for Ms. Natalie's vacation - Ms. Ramsey's vacation schedule, we've deferred that issue until she gets back and that's a fairly specific issue as well. So, I'm happy to proceed law firm by law firm or do the whole group and then Your Honor can take the responses, whatever you believe is most appropriate, happy to do it. Maybe we should go through at least one firm, and then kind of see how it goes, and then take that issue up again. Whatever Your Honor would like. We have made progress. We're no longer seeking depositions with respect to D'Angelo's firm at all. We think that the information that was provided in the interrogatory answers together with other information that D'Angelo's firm has provided is adequate to give us the factual background that we need for purposes of the estimation. With respect to the other three firms, I'm going to begin with Motley, Rice. We have gotten important information. It is not the object of my report today to talk about the implications of any of this information with respect to the estimation that is a subject that's going to

require probably a significant brief that we would file, talking about what does all of this mean, and that's not what we're seeking to take up today. What we're taking up today are the gaps that remain in the information that has been provided, and why it is that the depositions are necessary to cure those gaps. I'm going to go through all of the three firms that remain, and in each case, what I'm going to end up talking about is really two major areas. If we talk about Motley, Rice, we're first of all going to be talking about the B-reads, and then talking about the personal injury questionnaires because effectively the reason that we've asked for the law firm discovery and Your Honor has approved that as an approach is that there have been a series of issues that have related to whether B-reads are still being withheld under an incorrect assertion of the consultant's privilege and with respect to the personal injury questionnaire whether in fact the information that the questionnaire requires has been provided and also the related question about whether all of the information that will be used in connection with the estimation process has been provided. So, it's really kind of on parallel tracks. Both the B-reads and the PIQs are the subject of specific orders of this Court. So we're not asking for any further orders to support or to give bite to the requirements for asserting the consultant's privilege or giving bite to the requirements of

the PIQ, they've already been the subject of outstanding orders and their plans. It's only a question of assuring compliance with those orders. With respect to Motley, Rice and beginning with the B-reads. Does this - Okay.

MR. ESSERMAN: David -

MR. BERNICK: Yeah.

MR. ESSERMAN: Before you get into the details of each firm, all of these questionnaires were filed under seal, I believe or supposed to be filed under seal. They were subject to a confidentiality order, and I don't think that they should be put on the public record. I don't know what you intend to say and perhaps this is overly cautious, but -

MR. BERNICK: Well, that's a fair point. I appreciate your raising that. At some point we will want to describe and indeed show some of the answers, but I don't believe at any point we are going to be disclosing any information that is personal to any claimant, any information that relates to some kind of litigation strategy, and I don't really think that there is - I understand you filed it under seal, but I don't believe that it was the intendment of this Court to have the whole process of finding out whether there's been compliance with court order, which is all that this deals with, is compliance with court order, now be the subject of a proceeding that's not open to public scrutiny. This is just discovery from clients. So, we're very

cognizant of the concern with somehow the waiver of some privilege, but none of the facts that I'm going to go into today deal with any kind of work product at all or show work product.

THE COURT: Well, I think you need to show counsel what it is that you're planning to put up because my understanding of the confidentiality order is that it was essentially not going to be used on the public record. I don't think it should be disclosed on the public record unless there's an agreement that it will in fact not violate a confidentiality privilege. You know, to the extent that an answer without an identification of who it came from is put out, that may not cause a problem, but -

MR. BERNICK: It's all the answers are - and I'll just say, we're - I think that there is virtually not a single answer that we received from any client in response to - any law firm in response to these requests that has any identifying information with respect to any claimant.

THE COURT: Well, as I said, you need to show it to counsel before you put anything up on the public record.

MR. BERNICK: Well, then, what I would propose - I'm sorry. What I would propose - I'm happy to do that, I mean, it's just - it's all of the answers.

MR. ESSERMAN: It's easier just to seal the courtroom because I think we're getting in there by

indirection versus direction.

MR. BERNICK: That's fine. I think if they want to do that, Your Honor, that's fine, and then -

MR. ESSERMAN: Well, I don't know what you're going to say.

MR. BERNICK: Well, I'm going to say whatever is in the interrogatory answers.

MR. ESSERMAN: Well, the interrogatory answers have been filed under seal is the problem.

MR. BERNICK: I understand. It was at your - Your Honor, it was at their request, you acceded to their request. We said that it's not necessary. It's going to have exactly the effect that we're talking about now, but if Your Honor wants to clear the courtroom so that we can have an open discussion about what we believe to be their substantial discovery problems, happy to do it, and Your Honor can consider what to do with the record. I don't have a dog in the fight over whether we have other people in the courtroom. I just want to get on with the business of the day.

MR. ESSERMAN: We've got an order on the subject. It just seems to me that rather than risk an inadvertent disclosure by Mr. Bernick, it just is easier -

MR. BERNICK: Just to be clear. There's no inadvertent disclosure that Mr. Bernick is going to make. I'm going to read from their interrogatory answers.

THE COURT: That are filed under seal.

MR. BERNICK: I understand that, over -

THE COURT: You're not going to read from them on the record.

MR. BERNICK: Well, then, I -

THE COURT: You can point to them and tell me which interrogatory answer to read, I have them, and we can handle it that way because everybody who needs them has them, and that will certainly be an adequate representation without disclosing what they are, then -

MR. ESSERMAN: Or describing what they are.

MR. BERNICK: Well, Your Honor, at that point that is - I mean, it is almost unthinkable that discovery compliance could require the sealing of the courtroom, but if Your Honor - emptying the courtroom. I do not want to be impaired in my ability to point out to the Court and argue to the Court what our position is.

THE COURT: Mr. Bernick, I don't usually have arguments on discovery issues, so, you know, I'm not even sure why I'm having an argument on this one, but nonetheless -

MR. BERNICK: Well, that's fine, Your Honor. We're happy to have the depositions go forward. I don't know what else I can do. We submitted it to Your Honor. We submitted it under seal. We've described what it is we're going to do.

If - We'll proceed any way that Your Honor wants.

THE COURT: I think at this point it's probably best that I simply have the courtroom cleared of anyone who is not counsel to a party in the case, make sure that everyone who is here is subject to a confidentiality agreement. You will have to assure me on the record that you are. I will terminate the Court Call proceedings so that there is no one on the phone for a period of roughly, what, Mr. Bernick? Twenty minutes?

MR. BERNICK: I'm happy to get through it in 20 minutes. I doubt that it will take 20 minutes.

MR. HERRICK (TELEPHONIC): Your Honor, this is John Herrick with Motley, Rice. As it appears that my firm is the target of this request here today, it's going to be very difficult for me to respond if you terminate the Court Call.

THE COURT: Well, then, perhaps I need to do this on another day where we set up a separate conference call to do nothing but this because otherwise I don't know how else I can manage with people who are on the phone and not identified. So, perhaps we need to do it - I have time Thursday afternoon because Pittsburgh Corning and Narco Injet (phonetical) all canceled. So -

MR. LOCKWOOD: That makes sense to the ACC, Your Honor.

MR. BERNICK: Well, whatever it is that you want to

do. I think that it - What's going to happen if you seal this, it is undoubtedly going to be - I don't say "undoubtedly", nothing is undoubted, as I said this afternoon. I think it is likely that there's going to be some request to unseal this and all that this does, again, I would be very interested to learn for what other proceeding, this is a discovery dispute over privilege.

THE COURT: Mr. Bernick, here's your choice: I'll do it on the papers, and I won't have an argument, and then it will be easy, because I already have the information under seal. So if that's how you wish to proceed, I'll do it that way because I don't have to have an argument on a discovery dispute. I've got the papers. I can handle it that way.

MR. BERNICK: Let me take that up with my - We may be prepared to do that in the interest of getting this thing to go forward.

THE COURT: All right.

MR. HERRICK (TELEPHONIC): Your Honor, in that regard - this is John Herrick again. If the Court decides that they would like to make a ruling on the papers, then I need to have the opportunity to respond to Mr. Bernick's submission which we just received very late last week.

MR. ESSERMAN: Yeah, the response, the debtors' papers were received by all the parties Friday night, and think there was 50-some pages. None of the firms have had a

chance to respond to those, and we'll be happy to submit this on papers, Your Honor, but we would like a chance to respond.

THE COURT: Yes, well, you'd have to have a chance to respond, but frankly I'd like a response in any event so that I can have a more reasoned argument anyway.

MR. BERNICK: Well, Your Honor, that's fine. We can just take this off, and we'll proceed however it is that Your Honor wants. We can have this in a sealed courtroom. The issue is not going to go away, it will just take up more time, and then we're going to be asked for relief from the schedule so that we can get the information that we need and to the reports that we want -

THE COURT: Mr. Bernick, I am not giving relief from the schedule -

MR. BERNICK: Well, then, Your Honor, I -

THE COURT: - not to anybody, not for any reason. I'm not doing it. I've given every bit of relief from the schedule that I'm giving to anybody for any reason. I'm not doing it.

MR. BERNICK: Then Your Honor has to - I respectfully ask for Your Honor to explain to the debtor how it can be that we don't get relief from the schedule when we are not getting the information that we need. Your Honor said specifically that it was set over for today. They now have said, Well, it's sealed so we can't proceed. We're

prepared to proceed today.

MR. LOCKWOOD: Your Honor, I object to this -

THE COURT: Well, Mr. Bernick, we're having something on Friday. You may be able to proceed, but if the other parties haven't received the information -

MR. BERNICK: No, they got it on Thursday.

THE COURT: Well -

MR. BERNICK: No, they got it on Thursday pursuant to - Your Honor set a specific schedule, very specifically. We agreed on an expedited basis to respond to their submission of last week. We agreed - We worked around the clock to get this submission done as a further report so we could meet Your Honor's schedule for having it done today so that we could take up the depositions today. So, the idea that somehow we were dilatory is, I think -

MR. ESSERMAN: No one's saying you're dilatory.

THE COURT: Gentlemen, stop. I am not going to put up with this.

MR. BERNICK: Your Honor, we're prepared to -

THE COURT: Mr. Bernick.

MR. BERNICK: Yes.

THE COURT: What's the schedule tomorrow, Mona?

(Microphone not recording.)

THE COURT: I thought that was canceled.

(Microphone not recording.)

THE COURT: Okay, I thought the status conference was canceled. Is it back on?

(Microphone not recording.)

THE COURT: What time is that?

(Microphone not recording.)

MR. BERNICK: If I can make a suggestion, Your Honor. If Your Honor would go back to the paper that we filed, we have an Appendix A to it, and you will see the quotations that we have from the interrogatories, and maybe we can take a few minutes to do that, and maybe Your Honor then can determine whether this matter really is so sensitive as to require the lengths to which we're talking about. If it is, it is, but I really think that if Your Honor looks at that you'll find that it's the kind of stuff that you have every day of the week in dealing with privileged litigation matters. Answers to interrogatories, answers to document requests, it's the same old stuff.

THE COURT: Well, I am not willing at this point in this proceeding to take on the risk that there will be some even inadvertent disclosure of information that should remain confidential. I'm not totally sure because I don't know where this discussion is going to go that there won't be something that will - even inadvertently and not even necessarily from the debtor become or violate that confidentiality privilege. It would be just easier to make

sure that it doesn't happen in that context, Mr. Bernick. So, the choices are these: Either I get briefs filed very shortly, and I deal with it in chambers on my own or, I can schedule an argument tomorrow morning after I have half an hour status conference on a disclosure statement hearing. So, we can do it at 10:30. I honestly don't know what time my flight is out of here, so I can't tell you how long you have, probably not more than two hours, but frankly I'm not going to let you argue this for two hours anyway. And/or Thursday afternoon.

MR. ESSERMAN: I've got an important meeting in San Francisco that I've got to leave tomorrow. I can take an all-night flight and get in Thursday morning, and so I can be here Thursday, but I cannot be here tomorrow or Wednesday.

THE COURT: Well, Thursday it can be by phone too. I mean we could do it by phone.

MR. ESSERMAN: I'll be here on Thursday.

THE COURT: Well, it will be in Pittsburgh. Thursday we'll be in Pittsburgh.

MR. BERNICK: Thursday - I'm sorry, Sandy. Is that Thursday morning or Thursday -

THE COURT: Afternoon.

MR. BERNICK: So that would make - I could probably do it Thursday afternoon. I have to get from San Francisco back as well on Thursday, and I have to be in Michigan on

Friday, but I -

THE COURT: It can be by phone. It can be by phone, if that's, you know, something that we can arrange because I will have the Court Call operator, I will simply want an assurance from those of you who are signed up on this Court Call that you will have no one with you or you will identify who is with you, that's all. I will not permit anybody but counsel to the various constituent parties to participate.

MR. BERNICK: Yeah, I - at least from the debtors' point of view, the matter is of such great importance that I'm fairly confident that my clients will want me wherever Your Honor's going to be. In fairness, there is - It would go faster if we have the ability to show some of the materials, and it would just make it quicker.

MR. ESSERMAN: I would like a chance to respond in papers. I have no objection to oral argument. I think that that's fine, but it would be nice to have a week to get some papers in in response so that -

THE COURT: Well, if I give you a week, then I'd have to back off what I just told Mr. Bernick about the schedule.

MR. ESSERMAN: Well, we just haven't had a chance to respond to a very thick paper the debtor has just filed and in fact it had - because the papers were filed under seal, the debtor did not file a certain section under seal, and we

had a bunch of go-arounds to get the sections that were under seal, we had to get permission from all the firms involved to get it under seal, because they were properly not producing those except after proper formalities. So, I would suggest a paper on a relatively short time period. I think we will need - the firm will need a week, and I'll make myself available, like Mr. Bernick will on relatively short notice in wherever Your Honor wants to have this.

MR. BERNICK: Your Honor, let me make a proposal. I know we have the 1st of August as a day that's a personal injury thing.

THE COURT: July 30 and August 1, I think are property damage days.

LAW CLERK: The 30th is set for two hours first thing in the morning for PI status, it's a just-in-case. The 31st is set all day for property damage.

THE COURT: Oh, 31st, that's right. I skipped a day.

LAW CLERK: Well, the 30th is set for property damage too, and the 1st is set for property damage from 9 to 11 to argue the Canadian statute of limitations.

MR. BERNICK: I guess it's a question of whether Your Honor has time in the afternoon on the 1st or -

THE COURT: I don't know.

MR. ESSERMAN: I can do it any of those three days. Either 30th, 31st, or the 1st.

MR. BERNICK: I can do it the 30th, but then if we do on the 30th, I think it will be reasonably prompt -

MR. RESTIVO (TELEPHONIC): Your Honor, Jim Restivo, on the phone. I think what the schedule is right now is on the 30th and 31st there's a trial of 10 Motley, Rice cases. I believe the Court was holding Wednesday, August 1 as a possible date for argument on the Canadian statute of limitations. When I give you my report, I will indicate to you that the debtor and Speights & Runyan have agreed to move that to the September 10 date which the Court is still holding for us, and so Wednesday, August 1 is no longer needed for property damage at all.

THE COURT: Okay, well, the question is, if we argue this August 1st, and I believe I leave August 1st in the afternoon, it's either August 1st or August 2nd, I'm teaching in a seminar. I just don't remember offhand what the trial schedule is.

MR. ESSERMAN: August 2nd is out for me. I've got to be in D.C., but August 1st anytime, anytime the 31st or August 1st is fine.

THE COURT: The question is, on August 1st, if I give you two hours in the morning, and I am not going to spend more than one second more than two hours on this issue, so, if I give you August 1st and give you rulings that day, how much slippage is there in this schedule, because I am not

changing the trial schedule for this estimation.

MR. BERNICK: Your Honor, if we went forward that morning -

THE COURT: I can't hear you Mr. Bernick.

MR. BERNICK: Oh, I'm sorry. If we went forward that morning, and Your Honor were to rule from the bench, I think that what we would need to do is to assure that the arguments are essentially done in an hour and a half. In order to make sure that they're done in an hour and a half, we'd have to have some real regulation of the amount of time that people spend per total side. So if we go an hour and a half and we split it right up the middle, 45 minutes a side, then we could then get done, Your Honor then has the opportunity, there's always a certain amount of dialogue, and we then don't need to worry about submitting an order after the fact, you just rule from the bench, I think that that would probably work out. We would also need to get the briefs from the other side. I would suggest by Friday at noon so that we know what it is that we're dealing with. We had to respond in extremely short order to their submissions, I think it's only appropriate, and then with respect to the slippage in the schedule, depending upon how tight the schedule is for them completing whatever depositions need to be taken, et cetera, et cetera. I don't know that there will have to be a slippage. I don't want - What I'm concerned

about, obviously, is we have briefs, then we have a hearing, and then it takes at least about 10 days to 2 weeks if not another hearing to get the order settled, and so, if Your Honor rules from the bench and we have an order right then and we set a very prompt timetable for completing the discovery, I don't know that we'll have to have any schedule slippage.

THE COURT: All right, I will rule from the bench. So, when will I get the briefs in response for the -

MR. ESSERMAN: Well, Your Honor, we would prefer to have them on the 30th, which would be two days before the argument. If that's too tight for Your Honor, we'll get them by the end of the day on Friday, July 27th.

MR. BERNICK: Apart from Your Honor's burden, which I know is greater than ours, we certainly don't want to have to deal with the brief that we get on Monday for purposes of a hearing on Wednesday. We have submissions from three different firms, and we'll probably hear from at least two different committees and perhaps from others who are not among the firms. That's what's happened before. It's a massive compilation effort.

MR. ESSERMAN: Let's just do the end of the day on the 27th.

MR. BERNICK: Yeah.

MR. ESSERMAN: That's fine.

THE COURT: All right, they're due Friday, the 27th. Okay, the argument's going to start at 8:30 on August 1st in Pittsburgh. There will be no phone participation. It's going to be in court only, and only counsel to parties will be present. The record will be sealed.

MR. ESSERMAN: And, Your Honor, Mr. Bernick suggested 45 minutes a side. I think that that's fine.

THE COURT: All right. Okay, item 19 then is continued to August 1st in Pittsburgh.

MR. RESTIVO (TELEPHONIC): Thank you, Your Honor.

MR. BERNICK: I believe that that brings us to the PI status which is item 20. I don't know that there is anything from the debtors' point of view that was important to take up except that there were some scheduling adjustments that did not affect ultimate end dates, and I don't really know, frankly, given the hour whether we really have to - Well, is there something that - I guess I'd ask whether the ACC needs to do anything. - Okay, that's fine, but I think Mr. Finch wants to put on the record, which is fine with us.

MR. FINCH: The Libby claimants had requested a one-week extension of the deadline for the non-estimation expert reports, which Grace, the ACC, and the FCR agreed not to propose. It won't have any effect on the overall schedule. Basically instead of expert reports being due tomorrow, they'll be due on July 31st for the non-estimation experts.

There is also an issue with respect to -

THE COURT: For non-estimation?

MR. FINCH: Non-estimation experts. There was also an issue with respect to the estimation experts for the rebuttal report, which again won't affect the end date, and I don't know - I can't recall exactly the date we agreed - Ms. Baer has that date in front of her. I believe it was September 11th - moving the August 8th date to September 11th which all parties had agreed which would again not affect the Court's schedule other than the submission and the rebuttal reports. And then there's something that we haven't discussed but Ms. Baer just raised with me now. I don't have any problem with it. The current order has an August 20th deadline for identification of fact witnesses who would testify at the hearing and the debtor has proposed September 24th, 2007 for that date. I don't have any problem with that date. That still gives us about 60 days to finish any cleanup fact witness depositions. Do you have a problem with that, John?

UNIDENTIFIED SPEAKER: No.

MR. FINCH: So, with those three non-material changes to the schedule, that's all we have on the PI side.

THE COURT: All right, that's fine. Is there an order to that effect?

MR. FINCH: I assume the debtor is preparing one.

MS. BAER: We haven't typed one yet, Your Honor. I've marked up a current order, and we'll submit it later today.

THE COURT: All right.

MR. FINCH: Thank you, Your Honor.

MR. BERNICK: That would then - I don't know if there's anything else that Your Honor would like to take up in connection with item 20.

THE COURT: No, I think I'm fine. Ms. Baer seems to be keeping us sort of straight on what's going forward when, so -

MR. BERNICK: Okay. Item 13 is a status report on PD and -

THE COURT: I'm sorry what were you back to?

MR. BERNICK: Yes, we'll go back to item 13.

THE COURT: Thirteen, thank you.

MR. BERNICK: Yeah, I'm sorry, Your Honor, and that's a PD status report, and we would then proceed with 13, 14, 18, and those are all Mr. Restivo, so I would just turn the matter over to him. I know that he's on the phone.

THE COURT: All right, Mr. Restivo?

MR. RESTIVO (TELEPHONIC): Good afternoon, Your Honor. With respect to item 13, the debtors' status report on PD claims is as follows, and I'll try to be very quick. We have approximately 194 claims left that are in play, Your

Honor. Of those, four New York statute of limitations claims, three Minnesota statute of repose defenses to claims, 98 California statute of limitations defenses, and two other statute of limitations defenses. All of those, Your Honor, are *sub judice* before Your Honor, and I'm not quite sure if the Court has given an estimate as to rulings, but 107 of the 194, Your Honor, are in your bailiwick not the debtors'. That leaves, Your Honor, a number of other cases. Ten of those - ten Motley, Rice cases will be tried next Monday and Tuesday on statute of limitations grounds. The parties have agreed to talk later this week after all of the papers were filed to see if we can't reach some stipulations or at least minimize any differences with respect to exhibits and witnesses and that will happen after our filings today. Of the remaining cases, Your Honor, 59 of those are covered are from Canada. They are covered by our motion for summary judgment on statute of limitations grounds. Last time we were before the Court, August 1 was a possible date for arguing those motions. I believe we have negotiated with Speights & Runyan to have that argument on September 10 which the Court has been holding for property damage. Both sides appreciate that we have to have a pretrial schedule. We're going to get their expert report or reports today, and then we're going to talk about some depositions, but all of which will allow the parties to have that argument on the Canadian

cases on September 10. The only other aspect of the report I should cover, Your Honor, is one of the California cases not subject to our motion on statute grounds is Pacific Freeholds. Trial is set for that case on September 6th and 7th. I believe the parties are going to talk tomorrow, I believe, have very different views as to what discovery if any needs to take place, and if the Court does have Thursday available this week, if the parties could have a 15-20 minute pretrial conference or discovery conference with Your Honor, I think the parties are going to need the Court's input as to what it that can be done or cannot be done so that we can try Pacific Freeholds on September 6th and 7th.

THE COURT: Well, I think I scheduled a Federal-Mogul issue at 2 o'clock on Thursday. How about 1:30? Is a half an hour going to do it?

MR. RESTIVO (TELEPHONIC): I would think so, Your Honor. I think Mr. Runyan's on the phone, but 1:30 would be okay for the debtor.

THE COURT: Mr. Runyan? I guess he's not there any longer. Will you notify him, 1:30 -

MR. RESTIVO (TELEPHONIC): I will notify him and confirm to the court's staff that that's okay with Mr. Runyan.

THE COURT: That will be in Pittsburgh. He can participate by phone though, Mr. Restivo. I don't see any

reason why - especially if it's just the two of you, you don't even probably need Court Call, you can just call into chambers and we can connect him into the conference call.

MR. RESTIVO (TELEPHONIC): Okay, I will tell him that and we will do that. So that's traditional property damage status, Your Honor, I'd like to jump if I could to the status conference on the ZAI Science issues. Mr. Westbrook and I have had a number of conversations. We have given each other a number of things to think about, and we need to talk some more and rather than have both sides give the Court a status report today, we would like the Court's permission to give the Court a status report at the August 29 omnibus because we need to do some more talking among ourselves to see if we can come up with a consensus suggestion for the Court.

THE COURT: All right, do you want that continued to when? I'm sorry.

MR. RESTIVO (TELEPHONIC): That's to the next omnibus which I believe is August 29.

THE COURT: All right.

MR. RESTIVO (TELEPHONIC): And so that takes care of item 18. With respect to item number 14, I think the Court signed an order on the leave for filing a report of Dr. Elizabeth Anderson.

MS. BAER: Your Honor, we filed a certification of

counsel on the 13th, it's at item 1629 on the agenda - I've not seen an actual signed order, but I do have a copy to hand up to the Court.

MR. RESTIVO (TELEPHONIC): With respect to that, and I stand corrected, with respect to the order, Mr. Speights, who I think is on the line, wanted to have input as to - there's a blank in the order, Your Honor, for a date for the PD claimants to file rebuttal reports, and Mr. Speights, I think, wants to make a suggestion or a comment on that date.

THE COURT: Mr. Speights?

MR. SPEIGHTS (TELEPHONIC): Actually, Your Honor, I think Mr. Baena might have a general comment on behalf of all PD claimants as to that date, and I may well join in what Mr. Baena says. Just while I have the floor, I will say from the first time that Mr. Restivo addressed the Court and brought this to the attention of the Court, I said that I would not have an objection to that provided we had adequate time to get our own rebuttal expert or experts with respect to this witness, and as to how long that should be, I would like as long as possible, but hazard hasn't even been set yet, and perhaps Mr. Baena has some suggestions for PD claimants as a whole.

THE COURT: All right, Mr. Baena.

MR. BAENA: May it please the Court, Scott Baena on behalf of the Property Damage Committee. Your Honor, just to

give you a little context, as I understand it, Dr. Anderson's report has been submitted in respect of the lack of hazard issue, which as you know, has not even been scheduled as of yet for hearing. The report is accompanied by the motion because the debtor didn't file the report by the deadline that was set by the existing CMO. I suspect that nobody's objected in large part because as it hasn't been scheduled yet and for that very same reason we don't see the rush for the requirement of rebuttal reports. In addition I'd add that at this juncture requiring those who are embroiled in claims objections based upon the other sorts of claims or objections that have been asserted, this is a real distraction for them to now go out, get an expert of their own, and file a rebuttal. Moreover, as the motion itself points out, if any of the objections that are asserted other than lack of hazard are successful, those claimants won't even get to that next stage. So, in addition to everything else, we're exposing them to the incremental expense of other witnesses when they may not even need it. And so, for all these reasons, we think that the Court ought to put off that deadline as far into the future to accommodate a resolution of the other objections in respect of those claimants who are implicated by this report.

THE COURT: Well, okay. I guess the question is how to facilitate that because I agree, to the extent that we

haven't gotten through the statute of limitations issues, but I'm sure an order to tee up the lack of hazard issues, some of these things have to work in tandem to a certain extent, I am working at the moment on two of the opinions, Minnesota and Arkansas, and I hope to have Arkansas done shortly. Minnesota's maybe going to take a little bit longer for reasons that I, at the moment, can't go into, but I hope at least to get those two opinions out soon, but that's not going to help with the bulk of these issues. If I can get to California next, that should take care of the larger bulk of claims, but then you still have Canada and some other issues to deal with, so, you know, it's still going to be awhile.

MR. BAENA: What if we - You allowed the late filing of the report. Nobody has objected. You reserve on when the rebuttal report is due. We have another status report - another omnibus, excuse me, August 29. Let's revisit that issue then.

THE COURT: That's fine. I think it could probably even safely be revisited in September and maybe even in October, frankly.

MR. BAENA: That would be fine with us, but I didn't want to shock you by suggesting it.

MR. RESTIVO (TELEPHONIC): So, Your Honor. Jim Restivo, we do not object to not having a date in this order. We would ask that we revisit the issue of rebuttal reports at

the omnibus hearing in August. We may know more in terms of what claims are still alive and which was aren't and let's revisit it in August. We may decide in August not to revisit until a later date, but I'd rather keep the pressure on all of the parties including the debtor.

THE COURT: Including the Court, I think, is the issue there, because the Court has these under submission, but frankly, Mr. Restivo, I don't think - based on the fact that I am actually going to be on vacation, and I am not working on these opinions on vacation, for two weeks in August, I really don't think that you're going to have enough information from me by that August 29th report, and I don't want to lose track of these either. I don't care if the debtor just continues to carry these month by month, but I really don't think in August that I'm going to be prepared to give you dates by which you're going to get to any trials that you may need to try or know that you don't need to try the rest of the cases. I don't think the bulk of them will be done by then. I think realistically, the September date would make more sense.

MR. RESTIVO (TELEPHONIC): Okay. So on this order, would the Court simply put a period after "asbestos PD claimants crossed out on the proposed order have until blank to file rebuttal reports, and we would revisit the issue of rebuttal reports at the September omnibus".

THE COURT: What I'm saying is that the PD claimants shall have until a date to be determined to file rebuttal reports and a status conference will be held at the September omnibus on this issue.

MR. RESTIVO (TELEPHONIC): That's okay with the debtor, Your Honor.

THE COURT: Mr. Baena, is that okay?

MR. BAENA: That's fine, Judge. I'm just getting lost into which omnibus is which since we have two in August. I don't know if one of them is September's or -

THE COURT: Oh, well, I think -

MR. BAENA: But you intend to refer to the status or the omnibus hearing that is scheduled to be held in September.

THE COURT: That's correct.

MR. BAENA: Okay.

THE COURT: If somebody knows the date, I'll put the date in.

MS. BAER: September 24.

THE COURT: All right September 24th, 2007 omnibus hearing.

MR. BAENA: Obviously, Judge, if in September it's determined that we're forging ahead next with hazard, I don't wish for it to be a surprise to anybody that people will need time to go out at that point and get experts and prepare

reports, et cetera.

THE COURT: And I understand that, but I think you should be determining now who that expert may be because I don't necessarily know that you need to go hire someone, but you should certainly not assume September 24th if that's the day that you haven't yet started to talk about it. So, if you haven't already got somebody in mind, start thinking about it.

MR. BAENA: Thank you, Your Honor.

THE COURT: Okay, that was with respect to item number 14.

MR. RESTIVO (TELEPHONIC): Item number 14, and I think Your Honor at this point I can give the podium back to Mr. Bernick because I don't believe I'm involved on item number 15.

THE COURT: All right.

MR. SPEIGHTS (TELEPHONIC): Your Honor, please. This is Dan Speights. Before Mr. Restivo gives up the podium, could we have our monthly report on the status of the settlements and principals?

THE COURT: Yes, Mr. Restivo.

MR. RESTIVO (TELEPHONIC): Mr. Bernick.

MR. BERNICK: What? This is what's going on with the settlements?

THE COURT: Yes, settlements and particularly the

Prudential issues in New York.

MR. BERNICK: Maybe Ms. Baer can handle that. Maybe I can figure out somebody else to pass it off to, but I think Ms. Baer probably knows the answer.

MS. BAER: Your Honor, late last week, we received revised versions of the settlement agreement from the Dies group as well as from Prudential. We have gone through those and we are in the process of providing what we believe are final comments to Mr. Dies. He has a number of clients that all will have to sign off on this but we are very, very close to completing this.

THE COURT: All right. Isn't the Prudential issue still outstanding too?

MS. BAER: The Prudential and Mr. Dies spoke to each other and the goal is to have a form of agreement that will be essentially the same for both of them. So once we're able to get through the last few things with Mr. Dies, we hope that that will also resolve Prudential.

THE COURT: All right, Mr. Speights?

MR. SPEIGHTS (TELEPHONIC): Yes, Your Honor.

THE COURT: Anything more?

MR. SPEIGHTS (TELEPHONIC): No, Your Honor.

THE COURT: Okay. Mr. Bernick.

MR. BERNICK: Yes, I guess the last items that I think warrant any argument are 15 through 17. Fifteen is a

little bit different from 16 and 17. Sixteen and 17 pertain to Mr. Speights specifically. Number 15 is the order that is to be entered with respect to the supplementation of claims. Your Honor will recall the motion practice about what procedure would be adopted in the supplementation of claims, that there was an exchange of orders, and the certifications of counsel that you've received come both from the debtor and from the asbestos property damage claimants, and I think that there are essentially two issues. One is the recycle in the proposed order that relates to the fact that notice was provided, and there's an objection that Mr. Baena has on behalf of his constituency that there was not in fact sufficient notice to the individual claimants. There may have been notice to the Committee but where the proposed order says, "It appearing that good and sufficient notice of the motion having been given", is inappropriate because he believes that there was not adequate notice to the individual claimants. The second issue is a procedural one, I guess they're both procedural in a way, but the second issue relates to what happens in the event that leave is granted for the supplementation of a claim? Is it necessary for the debtor to come back and file a motion asking for the opportunity to supplement its response so as to be able to object or otherwise respond to the claim? And I believe it's the position of the Property Damage Committee that the debtor

should have to make that application whereas it is the debtors' view that just like any amendment to a claim or a pleading, a complaint, gives rise as a matter of due process to the opportunity to make then a response. We shouldn't have to make application to the Court in order to be able to have the right to make a response. So, those are the two remaining issue. I don't know if Your Honor's had an opportunity to take a look at these certifications of counsel. I -

THE COURT: I saw them, but I saw them - I don't know, a week ago. I'm not sure exactly when they were filed, and I haven't looked at them yesterday or today in preparation for this hearing, so -

MR. BERNICK: Yeah. Well, if you take a look at the - in the certification of counsel that comes from the debtor, the PD Committee asks that the words "to the PD Committee" be inserted in a couple of places so that the notice, the statement regarding sufficiency of notice is confined to the PD Committee. Our response points out that there was in fact fairly extensive notice, and the certification of counsel says that when we filed the motion, remember as an emergency motion relating to supplementation, we filed the motion on April the 6th. We served the motion via first class mail on the 6th of April, and proposed an April 17 objection date. The Court issued an order shortening the notice, and then we

served the order shortening those on April 18 with an objection deadline that was now moved back to April 23, again by first class mail. No claimant has filed any objection to the motion except for the PD Committee in a subsequent joinder from Prudential. No PD claimants sought leave of Court to file an objection after April 23, which is the objection deadline. No PD claimants spoke on this issue at the May 30 court hearing. All PD claimants had notice of the motion more than one month before the May 21 omnibus hearing when the motion was initially on the agenda and when the Court directed that it be taken up again on May 30, and all PD claimants had the opportunity to participate in those hearings. No PD claimant has complained about any service issues regarding this motion despite that background. So, our view, Your Honor, is that there were multiple notice. There's been a lot of time that's been able to pass, and perhaps what's even more important in this case is that we're kind of down to the short hairs of what's going on in this courtroom. We're not dealing with an overwhelming number of counsel for the claimants. They certainly have an obligation to pay attention to these proceedings on a very regular and diligent basis, and not the least of the reasons for which is, that the Committee now, in a sense, has somewhat divided loyalties. There are some folks who have settled or are settling, and are interested in moving forward with the case

to an ultimate conclusion, there are others who are not yet settled and are still interested in the litigation process, so it's a period of time in which the claimants have an obligation to be diligent, they can't simply rely upon Committee counsel. And against that backdrop, given the notice that did take place and it's not as if there was an order that was entered immediately after the first notice by mail, we believe that there's been more than adequate notice.

THE COURT: Well, your certificate of service, who was served by first class mail -

MR. BERNICK: It's the whole - all claimants' counsel - yeah, we sent it out to all claimants' counsel.

THE COURT: On both occasions.

MR. BERNICK: I'm sorry?

THE COURT: On both of the occasions when the first class -

MR. BERNICK: On both of the occasions, yes.

THE COURT: Okay.

MR. BERNICK: I'm just looking at the long list that we have here. It's the usual long list. I see Mr. Speights is very prominently featured there, of course, and Motley - the Motley, Rice firm is on there, Mr. Westbrook - all the people that represent the individual claimants. The second issue - and I know that Mr. Mango will want to respond or maybe Mr. Sakalo will elbow him out of the way so that he can

respond this afternoon. Again, Your Honor has already recognized, and I think we have a transcript page here, although I don't have it readily at hand, that there should be, obviously if the complaint, i.e., the claim is modified on motion, to then go through and say there may be leave sought to respond simply waters down what clearly is a due process right, which is if the claim is modified, we should have the opportunity to also modify our response. So, we don't think it should be necessary for us to come back in and make an application for an opportunity to respond. We know that as this rule really effectively has been applied to us, it has been a foregone conclusion that where we've been allowed to supplement or to supplement a defense, the other side has been given the opportunity to come in and designate for their witnesses and the like, so this also falls under the sauce rule, and for those reasons, we would ask the Court enter the order as we drafted it, and so that the notice is - the adequacy of notice representation is not confined to the PD Committee and so that we do not have to have the need to come back in and make application for the opportunity to respond to amended claims that should be as a matter of right.

THE COURT: All right. Mr. Sakalo?

MR. SAKALO: Good afternoon or good evening, Your Honor. Jay Sakalo on behalf of the Property Damage

Committee. Mr. Bernick fairly characterized the dispute that the PD Committee and the debtors have in respect of the order. I just want to address a couple of points on notice which Mr. Bernick glossed over. When the debtors served the motion to shorten notice and the emergency motion, he did it by first class mail. The Court entered the order shortening notice on April 17th with a return date of April 23rd. The debtors then served that motion on April 18th by first class mail. Claimants were not deemed to have received that by first class mail until April 23rd, which was the deadline that the Court set to respond to the underlying emergency motion. So claimants by the time they received the order shortening notice, which was again only sent by first class mail, would have received that order on the day an objection to the underlying motion is due.

THE COURT: Well, they'd get it April 21st -

MR. SAKALO: Your Honor, attached to our certification of counsel, and I can put it up on the Elmo if it's still plugged in. I'm not sure if it is. We attached an exhibit that showed the timeline, and the order was entered April 17th, which was a Tuesday. It was served April 18th on a Wednesday. It would have been received over the weekend, under federal rules, that's Monday when they actually would have deemed to have received it. So -

THE COURT: No, the federal rule extends the

deadline for filing something. It doesn't extend the deadline for receipt of something. There's mail delivery on Saturday, so that -

MR. SAKALO: Correct, there's mail delivery on Saturday, but -

THE COURT: That means, April - Thursday and Friday, so they would have gotten it - or I'm sorry, Wednesday, Thursday, and Friday. They would have gotten it on Friday.

MR. SAKALO: I think actually, under the federal rules it's if it's deemed put in the mail Wednesday, it's deemed to have been received on Saturday.

THE COURT: All right, even -

MR. SAKALO: But in any event, on Saturday, I don't now if claimants were or were not in their office on that Saturday and received that.

THE COURT: Oh, it's to lawyers, sent to the lawyers.

MR. SAKALO: That's correct. They weren't serving individual claimants under the procedures that we've established most of these papers have been served on claimant's counsel. So, to the extent they would have received it, it would have been Saturday at the earliest, under the rules it would have been on Monday. That was the deadline to file an objection. So what we're simply looking for, Your Honor, in that respect is under those circumstances

notice was probably given to the PD Committee because we had objected to the order shortening notice. We were actively watching the docket because we knew what days the debtors were seeking -

THE COURT: But the other thing is, most of these, if not all of these firms are getting electronic notice.

MR. SAKALO: These are not served electronically, Your Honor, unless you're a Delaware lawyer, you do not - We don't, for instance, receive these through ECF because we're not Delaware counsel.

THE COURT: You don't have - You have everyone who's filing electronically is either on the electronic service list or has Delaware counsel filing for them electronically. So, as soon as the Court entered an order on the docket, on April 17th, either local counsel or the counsel who actually files pleadings got the electronic service. So even though the debtor made service of the order on the 18th and it got there whichever day, you know, counsel actually saw it, they got the electronic copy of the Court's order the day it was docketed, which was Tuesday. So, I don't see why there's a problem. That's number one. Number two, this case of any other case I have ever seen has more motions filed on an emergency basis and on a prompt basis, even if not on an emergency basis, there is no way that if counsel had some indication that they had gotten an order the day that a

response was due that I wouldn't have had something from those counsel saying, I don't have time to respond. I need an extra day because I just got the order today, and I don't have time to answer it. So, that's the other thing that I simply cannot track in this case. This is a very vocal case.

MR. SAKALO: I understand that, Your Honor. The debtors in this case as we've been dealing with the PD claims objection process, have continually served these types of papers either by fax service or by email service out to claimants and the PD Committee, other interested parties. None of that occurred in this case with this particular order. So, even though claimants would have ordinarily been receiving these from the debtors, it's not required under your administrative case management order. That's the process that's been employed. The debtors chose not to do it in this case, and the PD Committee questioned the debtors' motives to some extent because they served the original emergency motion only by first class mail. And then served the order granting the emergency - the motion to shorten time by first class mail, yet they were seeking to abridge the time from the 25 days that we normally have to about 15 days. I'm not sure why the debtors would have chosen to do that, and -

THE COURT: I don't know.

MR. SAKALO: - and as a result, claimants were

hampered in their ability to respond to the motion.

THE COURT: Well, I may accept that if I was hearing that from a claimant, but I haven't heard that from a claimant, and with respect to the Committee, I'm not sure that the Committee which continues to tell me that it doesn't represent individual claimants has standing to raise that issue on behalf of the individual claimants who haven't argued that they didn't have an adequate opportunity to be heard. If I heard that from an individual claimant, then I would think I would have something that I needed to address, but I haven't heard that from an individual claimant, and I don't have an affidavit attached to the Committee's response that indicates that you've heard it from an individual claimant either. So I don't have a basis on which to say that notice was inadequate in this case.

MR. SAKALO: There is no affidavit attached to our certification of counsel, that is correct. I can attest to the Court that I have heard it from claimants. I understand that's not an affidavit for the Court's purposes, but we were advised by claimants that they did not receive it until the 23rd.

THE COURT: Well, okay, then if that's the case, and that was the response date, I think they know how to file motions with this Court. They've done it before. I certainly would not attempt to prejudice anybody, in fact, I

still wouldn't attempt to prejudice anybody. If they've got a position that they think they need to state, I'd be happy to hear that position, but I don't think that acting through the Committee for this purpose is the appropriate thing. It appears to me that notice was adequate. Once I get this order entered, if they want to see reconsideration because they didn't get appropriate notice, I'll hear them.

MR. SAKALO: Understood, Your Honor, and just one last point on that. We did raise in our papers, in our objection to the underlying motion, the inadequacy of the notice and that the hearing on May 30th, the debtors didn't address that. They didn't put any evidence or testimony in to address our objection regarding the inadequacy of notice.

THE COURT: Well, I still think the issue is that any one who has filed something electronically whether on their own or through local counsel has gotten the order of the Court as soon as it's docketed, and I believe at this point, that applies to nearly, if not every, counsel who's representing plaintiff here because they've all filed 2019 statements electronically. So in order to do that, they have to be on the Court's electronic docket entry, so they should have all gotten the electronic notice. They may not have gotten it from the debtor, but they should have gotten it from the Court. So unless I see some motion for reconsideration, I think this notice is adequate. If some

counsel tells me to the contrary, I will certainly not attempt to prejudice the counsel's rights and opportunity to be heard before this Court, but I don't see any evidence of that on this record.

MR. SAKALO: Understood, Your Honor.

MR. BERNICK: Your Honor, if - we're you going to the next issue or -

MR. SAKALO: Yes.

MR. BERNICK: Yeah, I would just note that this was ultimately not heard for another several weeks, so during that period of time, if somebody wants to come forward presumably they'd be able to explain how it is they didn't learn about it from April 23 all the way until the hearing in May.

THE COURT: Okay, but regardless, the response date was still April 23rd. So, I mean, yes, there are those issues, but the issue I'm addressing here is simply the adequacy of notice, and I don't see any reason on this record why notice was inadequate for the reasons I've expressed. If somebody has a gripe because they really didn't get either the Court's order or the appropriate notice, then I'll hear it if it's filed, but I don't see a basis for it on the record right now. Okay, next one, Mr. Sakalo.

MR. SAKALO: The second point of disagreement, Your Honor, is the requirement that the debtors, if the Court

allows an amendment to a proof of claim, that the debtor be required to come back to the Court to seek leave to amend their existing fifteenth omnibus objection to the proof of claim.

THE COURT: Well, how is the claimant going to amend the claim? By filing a motion to amend?

MR. SAKALO: Under the order, a claimant would have to move to amend. The way we envisioned it, the debtors would respond, presumably object to that motion, and in that response or objection the debtors would file, they can address at that point any need they would have to have to file a supplemental objection. If you recall that the fiftieth omnibus objection includes forty some odd categories of objections. They're not specific as to particular claims. The facts aren't specific as to particular claims, there's a schedule that lists which claims are subject to which objection. The claim that was to amend a response on its proof of claim seek to add additional evidence that addresses perhaps statute of limitations objections or something along those lines. Those objections are already pending. We just want to make sure that we're not back before this Court arguing over the debtor's attempting without coming to the Court to have leave to amend, filing an amended objection that goes beyond the scope of the permitted amendment that you would allow under the proof of claim. So we think from

an efficiency standpoint, it makes sense for the debtors to advise the Court and claimants what additional objections they think they need to file.

THE COURT: I think it may make more sense to do it this way, to take care of it in any order that allows an amended claim to be filed, to simply set a deadline for the debtor or any other party to file an amended objection to the claim assuming one has already been filed to address the changes, and that should take care of this whole issue.

MR. BERNICK: That's fine with us, Your Honor.

THE COURT: That way it's clear that they're to address new issues only, and it should limit the issues, and it should limit the time. So, how about if we just do an order that says if somebody files a motion to amend the claim that any proposed order has to include a paragraph that sets a blank space for a date by which amendments to any pending objections to the claim are to be filed to address the new issues.

MR. BERNICK: Actually, Your Honor, our proposal I think says pretty much that. It says if an asbestos PD claimant and other counsel is granted leave to amend supplement and/or otherwise change the asbestos PD claim, then the debtors have leave to amend supplement and/or change their objections to such claims asserted in the fifteenth omnibus objection solely to address the PD - the asbestos PD

claimants' amendment, supplement, or change.

THE COURT: I think it does. I think we just need to set a time frame. It would be easier just to do it all in one order that allows the amendment to be filed within a certain time and sets the time frame to address any amendments that the party wants to state.

MR. BERNICK: Right, so that we can add a sentence that says this shall be done at a time to be set in the order -

THE COURT: Fine or pick a period of time. You know, 20 days, whatever you folks can negotiate is fine, but I think it should set the time frame.

MR. SAKALO: Thank you, Your Honor.

THE COURT: Okay. So, Mr. Bernick, are you going to submit an order after you talk to Mr. Sakalo?

MR. BERNICK: Yes, I think that should resolve everything that we've got.

THE COURT: All right.

MR. BERNICK: That then I think brings us last of all to items 16 and 17. These relate to claims that were the subject of the late authority litigation. Your Honor will recall that Your Honor entered an order expunging some 68, I think it was, late claims and in the course of doing - not late claims, just late in the day, I'm sorry, Your Honor, expunging claims for lack of authority and in that order

address the issue of the ratification issue, that is, whether approval or authority given after the bar date could relate back. Mr. Speights filed a motion seeking to amend or alter that judgment in order to carve out three claims. And with respect to those three claims, the argument was that Your Honor had only ruled on ratification, and he still should be afforded the opportunity to argue that there was a timely, that is a before the fact authorization and in connection with that motion, he submitted some additional documentation which he said established that there had in fact been authority before the bar date. There was extensive argument on that issue last time. Your Honor ruled last time, and the only issue that remains, as I recall, and you've got the transcript here, was that Your Honor wanted to know whether there was anything in the January 2006 transcript, which is when the ratification issue was argued, or a transcript later on that year, I believe in August, that would have preserved or held the door open to the claimants to argue that notwithstanding ratification there was in fact evidence that there had been authority before the petition. We went back and forth with this, Your Honor. It was the debtors' position that the record had been closed, that the matter had been fully briefed, that Your Honor had ruled. The only reason that Your Honor reached ratification was due to the absence of evidence that there had been authority before the

fact, but Your Honor wanted to know what those transcripts said. We now have a motion that's been filed by Mr. Speights seeking -

MR. SPEIGHTS (TELEPHONIC): If I might say so, Your Honor, this is my motion.

MR. BERNICK: Yeah, that's fair enough. Well, then, I'll sit down and Mr. Speights can take up his motion.

THE COURT: Mr. Speights.

MR. SPEIGHTS (TELEPHONIC): Thank you, Your Honor. I know Mr. Bernick must be tired because he misstated exactly what happened at the last hearing. This is not a complicated matter. Your Honor ruled on 71, actually 68 claims on the authority issue where we had authority, executed, written authority but Your Honor ruled that in those cases in which the authority was not executed before the bar date you would not permit ratification. We filed a motion to alter or amend with respect to three claims, and attached to our motion to alter or amend ratifications which were executed before the bar date. Grace took the position in response to that, Well, it was too late. And that was essentially the record when we came and argued this motion in full before you at the last omnibus hearing. Your Honor did not rule. You took it under advisement. I made certain arguments about the history of the matter which occurred during the January 2006 hearing about how we got in that position, and Your Honor said you

wanted to rule - read the transcript before ruling on the matter. I am prepared to, but I'm not going to unless Your Honor wants, to reargue the motion that we argued for almost an hour at the last omnibus hearing. What is pending now, Your Honor, is a motion I filed, and I alerted Your Honor and Grace to it at a telephone conference on, I believe when we were discussing Anderson certification, was a motion to supplement the record on that motion to alter or amend pending before you, and I filed that motion to supplement the record and Grace has responded, and the supplementation simply attempts to attach an affidavit which explains those three documents provided to the Court in the motion to alter or amend in light of arguments which Grace has made, and essentially the motion to supplement says that despite what Grace said at that hearing, in fact, two of those authorizations were served on it prior to that January hearing and more importantly, we had all three of those authorizations with us at the January 2006 hearing to hand up to the Court if we had not decided to go down the separate trail of ratification. Your Honor, we can argue about this for another hour, but essentially all I'm asking now is, to allow me to supplement the record to add that to what you're already considering. You have the matter under advisement, and you can decide whether to accept or reject this while you are considering it, but I thought it important to get the

record straight since the supplementation disputes Grace's version of what occurred and disputes Grace's representation that it did not have at least two out of the three written authorizations prior to the January - or prior to the ruling and prior to the January 2006 hearing. At the end of the day, all three of these clients provided my law firm written authorizations before the bar date, and we would ask Your Honor to allow them to proceed in the bankruptcy and throw them in Mr. Restivo's hopper and let him make his motions and we will litigate them on the merits. Thank you, Your Honor.

MR. BERNICK: Your Honor, here's the - If I could, I just got the quote from the last hearing, because the page 109 essentially Mr. Speights made the pitch that he is making today. He said, "I would urge Your Honor again, you know, to set it down. Can we show you that we have authority for these claims? And Mr. Bernick can say you can't consider those three pieces of paper, and I'll argue with him. But I'll say, even if you don't consider those three pieces of paper, I'm prepared to give you the evidence that we have the authority, oral authority from these three people." I then say, "That is a suggestion that assumes what is now before the Court. He wants to have further evidentiary hearing where we then have to argue against the admission of the evidence." And this is what's key: Your Honor, motion for alteration or amendment, and the rules say specifically under

what circumstances that's appropriate and there are only three circumstances, and here's what I say, "We don't get to that theory", that is the new admissible evidence, unless the Court were to find that Your Honor (a) committed a mistake, which Your Honor did not do (b) there's been a change of law, which there has not been, and ©) the information was unavailable, which is plainly not so, it was clearly available. And those are the tests for alteration or amendment and there's nothing about, How, well, gee, let's kind of shuffle on forward that changes those requirements. And none of those requirements have been met. Your Honor then goes on to say, "Well, okay, I've got to look at the January transcript again. Was it submitted because if it was, I just didn't see it in the papers. It may be," and there's a colloquy about that transcript. And you go on to say at line 24, "I'll have her pull both the August and the January transcripts." I then say, "And I think I remember the August hearing because by that time Ms. Fry had gone off to greener pastures, and I argued it in October." And we go on to say, this is the last thing that was said that day and this is at page 111, "All right. I'll take a look at these, Mr. Speights, and see what the transcripts say. Mr. Bernick, I'm going to ask the debtor to put these on to the next July omnibus for a status conference. Hopefully I can make a ruling at that hearing, if I can't, I'll let you know. If I

think I need some evidentiary submission, I'll address it at that time, but I will read the transcripts between now and then and see if I can address it at the July hearing." We then go on to talk about the next item. So the posture of the matter was, they had asked for an amendment or alteration. We had argued that the standard had not been met. There was an effort by Mr. Speights to say, Well, here's what we would say if we were given permission, and Your Honor never provided for that submission to be made, never provided for any motion to be made. The only thing that remained to be done was to focus on these transcripts to see if in fact Mr. Speights was correct in his characterization that somehow the Court had left it open, that these matters could be pursued. Now, it may be that we haven't had the opportunity to take a look at the transcripts. There's nothing in Mr. Speights' submission that addresses the content of those transcripts, but they have this motion filed now, basically, again, assumes away the ruling, which is whether or not the requirements for alteration or amendment had been met. So, we object to that motion. We think it is again too late for all the reasons that have been indicated. If Your Honor wants to get the transcripts, we can pull them ourselves and provide them to the Court, but God knows, you have a lot of things to read anyhow, so, we stand at Your Honor's convenience, how you

want to proceed.

THE COURT: Well, I think I actually did have somebody pull the transcripts, but I confess that I didn't read them, but I believe I did have someone take a look - actually pull those transcripts, but I just didn't get that far to read them. So, I don't know what they say with respect to whether this issue was left open. Frankly, I thought that this whole thing was going to be - I thought it was going to be coming up for argument today, because of the fact that I knew from something that Mr. Speights was filing this motion. Something indicated that Mr. Speights was going to be filing this motion so somehow or another I thought that it was going to be coming up today for another argument, and I sort of pushed to the back of my agenda the fact that I had to read these transcripts, I guess. I thought it was something that was going to wait until after today's hearing. I guess I forgot that I was supposed to do it before today's hearing.

MR. BERNICK: But the posture - again, as I - we already argued this whole thing the last time.

THE COURT: Yes, no, you argued that, but not the motion with respect to filing these additional papers, and I thought that somehow or other that portions of the transcript would be coming in as part of this motion for the alteration to supplement the record.

MR. BERNICK: I have no quarrel, Your Honor, if it's appropriate to carry this over to yet the next conference so that Your Honor can take a look at the hearing transcripts. The threshold matter is whether the requirements have been met for alteration or amendment, and if the answer to that is that they have and Your Honor then wants to consider the possibility of a submission in order to then take the matter up again, that's appropriate, but I -

THE COURT: I think this is the issue the way I would take a look at the issue, Mr. Bernick, and you may disagree, but if in fact there was authority submitted before the bar date but somehow or other it wasn't made evident to me in the process of going through the documents because the documents that I went through did not in my view show me authority that was submitted before the bar date, but if in fact there was authority that was submitted before the bar date but I didn't see it for some reason or other, I'm not sure where it was.

MR. BERNICK: I would agree with that, but I think you have three different authorizations or three different pieces of paper that were submitted by way of demonstrating pre-petition authorization. They were not found. They didn't - They were either undated or unsigned or something, but they are not the evidence of pre-bar date authority upon which Mr. Speights is now relying. He wants to submit three

new pieces of paper that are not in evidence.

MR. SPEIGHTS (TELEPHONIC): That's absolutely incorrect, Your Honor.

MR. BERNICK: The only issue is the state of the record as of the bar date does it demonstrate authority? Any piece of paper, any evidence oral or otherwise, that was not made available prior to the time of Your Honor's ruling, whether it's oral or written or anything falls into the scope of the alteration or amendment rule. This is not a situation, Your Honor, where anyone's claiming that you failed to look at something. This is a situation where Mr. Speights says he wants to provide additional evidence in order to be able to say that those claims should not have been expunged. To do so, he's got to satisfy the rule. That's what the issue is.

MR. SPEIGHTS (TELEPHONIC): Your Honor, I disagree with Mr. Bernick, but I have a more fundamental problem than just my disagreement with him. The matter was set down - The matter was argued previously. It was set down pursuant to your instructions for status conference today. What's before you today is whether we can supplement the record or not. But if we want to talk about the merits, which Mr. Bernick wants to, we need to decide whether we're going to talk about the merits some more today or Your Honor, I'll have absolutely no problem with you carrying it over if we want to

hear additional argument after you've read the transcript at the August omnibus. I'm going to be there in person and do it, but if Mr. Bernick wants to go back and argue the merits, I really need to be heard because I now understand what happened there, and I believe, in light of the transcripts I've read, and in light of the supplementation that I've provided, I believe it's crystal clear what happened, and we had authority that pre-date March 31, 2003, and I believe I can convince you that we should be - that your order as to 3 of 68 claims should be amended. I don't know what you want, Your Honor. Do you want argument on the merits again today or is this a matter that you want to read the transcript first and then hear from us again?

THE COURT: No, I don't think I need argument on the merits of the claim again, Mr. Speights, I think what I need is a reference to the portions of the transcript that people are relying on. That's the problem. That's what I haven't looked at. Either the January or August transcripts, if those are the two places where this issue came up before. I thought from the one argument, and I apologize for not knowing the dates, but I don't know the dates, I thought from one argument on this issue that what you were contending was that the issue with respect to essentially these three claims was somewhat left open because in your view, and I don't mean to mischaracterize this so if I am, then please restate this

when I'm finished but, in your view, if you had authority, then it wasn't a ratification issue at all, and so, what the debtor was objecting to was the fact that as to these 71 claims there was no evidence of authority issued before the bar date. So the debtor filed the objections, and you filed in response whatever authority you felt you had. I thought as to all 71 of these claims that the issue was whether or not the authority was executed in writing before the bar date and then if not, whether the ratification principles would apply and for the reasons that I went into in the opinion I thought ratification didn't apply - did not apply, and so, that's why I came out the way I came out. Then I got this motion for reconsideration with respect to these three claims, and I thought your argument was that somehow in either the January or August 2006 transcripts that these three claims were somehow sort of carved out of the mix because in fact there was authority and that the issue as to whether there was authority was kind of preserved somewhere, and that I needed to go back and look at those transcripts, which I haven't done. Now, if I've misunderstood the argument, then you need to straighten me out about the argument.

MR. SPEIGHTS (TELEPHONIC): Well, Your Honor, I think you are very close to understanding the position that I tried to make at the last hearing, but let me just try to

distinctly say it again. At the January '06 hearing one of Grace's authority objections, and there were many authority objections, but one of them pertained to what they called 71 claims where the authority was executed after the bar date order, and when we started to argue that - and they filed their objection on that ground, and we were there in an evidentiary hearing where I was prepared to address each of those one by one as we did with other issues at that hearing, but when we got to that subset, and I think the transcript will reflect this, we went through and started arguing ratification, and it's reflected in the record that we don't agree with that characterization of 71, we think they're different, plus we have some that oral, no writing but oral ratification which Your Honor recognized would be sufficient, but we don't need to get to the specific number if Your Honor accepts ratification, because if Your Honor accepts ratification it doesn't matter. So, we had there, and this is what the supplement will show among other things, we had there all the ratifications including the 3 at issue here. We had them in the courtroom to show you that the authorization was executed prior to March 31, but when we argued ratification we never went through them one by one. So that now, the motion to amend is simply to say that, Your Honor. We need to go back, you would recognize that you could have oral ratification - oral authorization, for

example, we'd never gotten to them individually, and we believe you put - of the 71, we think you put 3 in the wrong bucket because these 3 had authority. And I think the transcript is clear on that, and we've asked you to move to reconsider it because we had the authorization executed before March 31. Grace has no evidence that they were not executed before March 31. Now, let me say one other thing, that's where we were at the last hearing at least when I stood up, but Grace took the position at the last hearing that somehow that it never had seen these authorizations before the January - or before our motion to alter or amend, and what this also does is, is to show that in fact Grace already had 2 of these, 2 out of the 3 of the written authorizations, dated before March 31 before the hearing. Grace is just trying to engage in a gotcha game here, Your Honor, because we never got to the individual consideration of these authorizations and the 71 set he's trying to say gotcha because we didn't discuss that even though they were executed before March 31, it's too late, and I'm more than happy for Your Honor to review the January '06 transcript. I really don't think it came up in the August transcript, but of course Your Honor can review that. I think the January '06 transcript will support what I'm saying.

THE COURT: Okay, Mr. Speights, I think it may be helpful if you would simply do a supplement to this motion to

alter or amend and attach the pages of the January transcript that you want me to review, and I'll give the debtor the same opportunity, to attach the pages that the debtor wants me to review, and that will somewhat expedite this process. So, how long will it take you to do that, Mr. Speights?

MR. SPEIGHTS (TELEPHONIC): A week, Your Honor.

THE COURT: All right.

MR. BERNICK: That's fine, Your Honor, and then we can set it down for the next hearing. If we have some other part of the transcript to point to then we can certainly do that. I've just been paging through it, but it doesn't really make too much difference what my observations are now. We'll just allow Mr. Speights to file whatever he wants to file on that transcript.

THE COURT: Yes, on the transcript and then how much time after Mr. Speights files his -

MR. BERNICK: Oh, a week, but I mean, this is a question of making sure that it makes its way into the paper queue.

THE COURT: I think if you simply attach it and file it in the JKF box, I'll get it and that way I believe between now and the next hearing, it will come to me in the JKF box. I'll review it.

MR. BERNICK: You know, the thing of it is, Your Honor, I'm looking at it right here. It's all of, you know,

maybe 30 pages altogether. Maybe the best idea is -

THE COURT: What are the pages?

MR. BERNICK: The pages are pages 20, as I see it, and Mr. Speights can correct me. This is the January 25 hearing, it's pages 20 - It's even less than that.

MR. SPEIGHTS (TELEPHONIC): I don't have it in front of me, Your Honor. I'll be happy to submit it within a week.

MR. BERNICK: Yeah, I think it goes up at most to page 39. I think it's actually even less than that.

MR. SPEIGHTS (TELEPHONIC): We were there for two days, Your Honor, and I will have to review the whole thing and make sure that all of it's there.

THE COURT: All right, that's fine, Mr. Speights. If you will just submit, then if the debtor has any additional to supplement the debtor can do that within an additional week, and hopefully then, at the August hearing, I really can address this issue. So, this will be continued to the August hearing for that purpose.

MR. SPEIGHTS (TELEPHONIC): Thanks, Your Honor.

MR. BERNICK: Yeah, that's fine. Anything else that we have until - I think we need a - exclusivity does expire today, I'm told by Ms. Baer.

THE COURT: Oh, all right. Well, exclusivity will be extended until I get an order out that deals with exclusivity. I hope to do - It probably will not come

tomorrow because I'll be traveling, but I hope to do it Wednesday if not tomorrow. So, there will be an order shortly, exclusivity will be extended for this brief period until I can get an order done on the motion to extend exclusivity.

MR. BERNICK: I - Did you have something - All that the debtor has are some miscellaneous orders at this point, Your Honor, but I don't think there's anything else that we need to take up. Mr. Kruger wants to -

MR. KRUGER: Your Honor, just a question. I'm sorry I didn't raise it earlier, but the reply that we received from the debtor with respect to the motions that had been made by the law firms via Mr. Esserman was a redacted version, and I wonder if there's any reason why the Committee, at least counsel, which are bound by confidentiality cannot receive the unredacted version?

THE COURT: I intended to ask the individual firms whether they would agree to submit the portions that were filed under seal by the debtor directly to the Committees, and Mr. Esserman was at that hearing and indicated that for Baron & Budd's purposes he agreed. Ms. Kearse was on the phone for Motley, Rice, she said she had to check with her client, and I don't believe anybody else from the other firms was present and as a result I don't know the answer to the other - what happened with respect to the other firms.

MS. BAER: Your Honor, what happened was, Baron & Budd did in fact agree that the Futures Rep and the PI Committee could have it. They then subsequently agreed that the Property Damage Committee can it when they requested it. The same thing happened with respect to Baron & Budd. We never heard from Kelley & Farraro. We never provided Kelley & Farraro's exhibit to anybody, and Mr. Kruger hadn't contacted us, and we didn't raise it with them so we never got a blank yes, give it to all of the Committees. So we only gave it to who they told us we could give it to.

THE COURT: You mean Motley, Rice and Baron Budd are the two who agreed to give it to the entities you just recited?

MS. BAER: That's correct.

THE COURT: Okay, so, Mr. Kruger, I suggest you contact Ms. -

MR. KRUGER: I'm at a loss to understand why an official committee cannot get whatever it is that's been filed under seal with this Court.

THE COURT: I am at a loss to understand that myself, but this was the issue: There was a specific confidentiality order that I entered, and I don't have it in front of me now. I didn't have it in front of me then, and as a result, I don't know who all the parties were to that order, and that's why I was being cautious about stating who

it should be delivered to, Mr. Kruger. So, to the extent that the order covers the Committee, it should certainly be disclosed, but I just can't make that representation, I just don't recall.

MR. FRANKEL: I believe that the concerns of the order only apply to the debtor and the four law firms at issue, and subsequent to that order the four law firms at issued agreed that the PI Committee and the FCR could, at least two of the four law firms, Baron & Budd and Motley, Rice agreed that the PI Committee and the FCR could get access to the interrogatory answers and the portion of the pleading that Grace had redacted and it's filed under seal. That is the state of the record of -

THE COURT: Well, then, perhaps somebody needs to file a motion then and serve it on those entities to get that order expanding to cover the Committees so that we don't have to deal with this, if that's the problem, because there was a specific order and I don't - as I said, I didn't have then, and I don't have now a copy of that order. I expected that the parties were going to work this out, Mr. Kruger, I didn't -

MR. KRUGER: Well, my only concern is the August 1st hearing and I'm not sure we can have a motion heard and done prior to that hearing, so we'll be at the hearing, but we'll be unable to really understand what's going on.

THE COURT: Well, I think at least from the perspective of Baron & Budd, based on the fact that they have disclosed it to the others, it's likely - I would suspect that they will be willing to disclose so why don't you contact Mr. Esserman, I don't know for sure, but he seemed willing to disclose it to the other parties, but I think to the extent that this is hamstringing the Committee's roles then that order probably is too narrowly crafted, but I signed the order as it was presented - well, I made a modification to it, but essentially I signed it the way it was presented by the law firms to make sure that the confidentiality was protected, and perhaps if it's not quite broad enough, maybe it needs to be broadened, but a notice has to go out if that's what's going to happen.

MR. BERNICK: What I propose, Your Honor, we have concerns along the same line, although obviously, we are included to a limited extent in the scope of the order, and my principal concern on behalf of the debtor is to assure that we continue this process, don't lose time, but Mr. Kruger is raising a problem that doesn't have a sharp edge to it in a sense that they're probably a number of others, and I think it may be appropriate to deal with Mr. Kruger's issue perhaps more *ad hoc* by seeking the permission of these other firms, but I do think that at some point we are probably going to want to take up the question of what is the

appropriate kind of protection for this information because I think that this matter has a lot of interest in the marketplace and elsewhere and -

THE COURT: Well, I'm not concerned about the interest in the marketplace, and that's not going to be a basis for expanding the confidentiality protection, but with respect to the Committees that have to participate in the estimation and the fact that this information is being provided for purposes of participating in the estimation, it seems to me that the Committees may have some interest. With respect to the marketplace, they may, you know, this information -

MR. KRUGER: They'll take care of themselves.

THE COURT: Well, not necessarily that, but their marketplace isn't going to be participating in the estimation hearing as a party in interest, and the purpose of this order is to make sure that the parties get prepared for the estimation hearing, so -

MR. BERNICK: I understand that and I, believe me I don't want to quarrel with Your Honor about this. We want to get the information, but this is the kind of thing where it creates a cloud and a break, and in ordinary civil litigation, this is a situation that has developed - brought a lot of attention as to what kinds of matters really can be kept under seal given the interest not just in the

marketplace but people in the open process of the courts.

MR. FRANKEL: Your Honor, the debtor has stamped all kinds of documents confidential and precluded me from carrying them to the marketplace and the Wall Street Journal, and there is no difference between -

MR. BERNICK: I'm not focused on the Wall Street Journal -

THE COURT: No, I've said three times on this record, I'm really not going to get into this type of conduct in this case. I'm just not going to do it. There is a basis in my view to maintaining these documents under seal or I wouldn't have put them under seal in the first place. There is confidential information that will be necessary to protect the privacy interests of certain plaintiffs involved in the cases, otherwise I wouldn't have ordered the information under seal. I expect it to remain under seal until it's necessary not to have it under seal. The debtor doesn't need this information in a piece-by-piece basis. This is not plaintiff litigation. It's estimation work. So to the extent that it's going to be aggregated into some collective data base at a certain point in time for purposes of the estimation hearing, that portion of it will not need to be sealed, but to the extent that the debtor wants to make use of specific bits of that information on a public record, that may in fact invade a privacy interest, that is going to be

kept under seal. Now, I don't know how much more I can -

MR. BERNICK: There's nothing more, there's nothing more.

MR. KRUGER: Your Honor, I don't disagree it's just that I think from the Committee's perspective we should be entitled - I would also press the nation purposes.

THE COURT: Yeah, and I think, Mr. Kruger, that that's a concern, and I'm concerned about it as well, but I also, because of not having the order here, think that the best way to go about it now is to contact those four firms and see if for purposes of the hearing on August 1 and preparing for estimation the Committee can't get access to those documents.

MR. KRUGER: That's what we'll do, Your Honor, thank you.

THE COURT: All right. Ms. Baer.

MS. BAER: Your Honor, we just have some miscellaneous orders to hand up to finish the agenda. Item number 12 was the Sempra settlement. That was a property damage settlement. We filed a certification of no objections on July 13th at Docket No. 16291. I have that order here. Then, Your Honor we have orders with respect to agenda items 1 through 5, which are continued claims, and lastly we have a stipulation with the IRS. That's agenda item number 7. It relates to an objection to their claim. The stipulation

effectively gets rid of duplicate claims, preserves the remaining claims, and preserves their right to claim joint and several liability in the event that we don't have a consolidated estate at the end of the day. So, I would like to hand up all of those orders.

THE COURT: All right. Mona, were any of those order CNOs were they entered? Not yet? Okay. All right, I will enter these orders. I have orders with respect to item 12, 1 to 5, and 7. I will enter those orders now. You need to be careful to make sure that in fact they're not in transit and haven't been entered today to be sure that there are duplicates. I'll try to make sure that doesn't happen.

(The remainder of this page is intentionally left blank.)

MS. BAER: Thank you, Your Honor, I appreciate that, and according to my count, that's all the items on the agenda.

THE COURT: Okay, anybody else? We're adjourned. Thank you.

MR. BERNICK: Thank you very much, Your Honor.

UNIDENTIFIED SPEAKER: Thank you, Your Honor.

(Whereupon at 6:55 p.m., the hearing in this matter was concluded for this date.)

I, Elaine M. Ryan, approved transcriber for the United States Courts, certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Elaine M. Ryan July 30, 2007

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